

Volume 1
Pages 1 - 261

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

IN RE TESLA, INC. SECURITIES)
LITIGATION.) No. 18-cv-04865-EMC
)

San Francisco, California
Tuesday, January 17, 2023

TRANSCRIPT OF TRIAL PROCEEDINGS

APPEARANCES:

For Movants:

LEVI & KORSINSKY, LLP
1101 30th Street NW
Suite 115
Washington, D.C. 20007
BY: NICHOLAS IAN PORRITT, ESQ.
ELIZABETH K. TRIPODI, ESQ.
ALEXANDER A. KROT, III, ESQ.
JOSEPH LEVI, ESQ.

LEVI & KORSINSKY LLP
75 Broadway
Suite 202
San Francisco, California 94111
BY: ADAM M. APTON, ESQ.

LEVI & KORSINSKY LLP
55 Broadway
10th Floor
New York, New York 10016
BY: MAX EDWARD WEISS, ESQ.
KATHY AMES VALDIVIESO, ESQ.

Reported By: **BELLE BALL, CSR 8785, CRR, RDR**
Official Reporter, U.S. District Court

(Appearances continued, next page)

APPEARANCES, CONTINUED:

For Defendants:

QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue
22nd Floor
New York, New York 10010
BY: ALEXANDER B. SPIRO, ESQ.
ANDREW JOHN ROSSMAN, ESQ.
PHILLIP B. JOBE, ESQ.
ELLYDE R. THOMPSON, ESQ.
JESSE A. BERNSTEIN, ESQ.

QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 South Figueroa Street
10th Floor
Los Angeles, California 90017
BY: MICHAEL T. LIFRAK, ESQ.
ANTHONY P. ALDEN, ESQ.
MATTHEW ALEXANDER BERGJANS, ESQ.
WILLIAM C. PRICE, ESQ.

Also Present:

MAITHILEE PATHAK
NICK FUENTES

Tuesday, January 17, 2023

8:10 a.m.

P R O C E E D I N G S

(The following proceedings were held outside of the presence of the Jury Venire)

THE COURTROOM DEPUTY: The Court is calling the case In Regarding Tesla Inc. Securities Litigation, Case No. 18-4865. Court is now in session, the Honorable Edward M. Chen presiding.

Does everybody have their laptops muted? I muted yours.

THE COURT: Now try it.

THE COURTROOM DEPUTY: Court is now in session, the Honorable Edward M. Chen presiding. Court is calling the case regarding Tesla Securities Litigation, Case No. 18-4865.

Counsel, please state your appearances for the record, beginning with the plaintiff.

MR. PORRITT: Good morning, Your Honor. Nicholas Porritt, Levi & Korsinsky, on behalf of plaintiff and the class. With me is Adam Apton, Elizabeth Tripodi, Joseph Levi also of Levi & Korsinsky, Mr. Littleton, the plaintiff. And also with us are Maithilee Pathak and Nick Fuentes, who are the jury consultants.

THE COURT: You might want to bring that mic onto the podium so it's closer to you.

MR. PORRITT: I apologize, Your Honor.

THE COURT: I could hear you, but the court reporter

PROCEEDINGS

1 needs to hear you very clearly. Thank you. Good morning.

2 **MR. PORRITT:** Good morning.

3 **MR. SPIRO:** Good morning, Your Honor. On behalf of
4 the defendants this is Alex Spiro, and my colleagues at Quinn
5 Emanuel. Thank you.

6 **THE COURT:** All right. Thank you.

7 All right. Good morning, everyone. This is the time that
8 we've set to voir dire the jury, and hopefully are in a
9 position to select a jury this morning.

10 As we have been discussing, we have gone through a fairly
11 extended process of sending out over 200 or about 200
12 questionnaires. And last Friday, as you recall, we went
13 through those, and vetted this group that we've called in
14 today. My recollection we are calling in about 55 or so, I
15 forget the exact number, 54, 55, somewhere around there. We're
16 waiting to hear from our Jury Administrator, how many have
17 actually made it here.

18 There are also the possibility, as I mentioned, that some
19 who did not fill out questionnaires will appear and will be
20 asked to fill out questionnaires, so there may be a plus or
21 minus. We'll see. But I expect about 50 people.

22 And just to remind us of the context, we have vetted and
23 asked not to come in those jurors who on the questionnaire
24 indicated they could not be fair to either side because of
25 their views, whether it's about the case or about the

PROCEEDINGS

1 litigants.

2 And so everybody who appears here are those who have
3 indicated they thought they could be fair and impartial jurors,
4 even if they have some knowledge or views about some of the
5 parties including Tesla and Mr. Musk. And so we are going to
6 go through the process today to voir dire them and to see
7 whether I can be satisfied that particular individuals,
8 prospective members of the jury, can in fact serve as fair and
9 impartial jurors in this case.

10 We've also tried to select those who either indicated they
11 could serve for the three-week, plus or minus, period for this
12 trial but there are a number of individuals, I think, we're
13 calling in about 20, 21 individuals who indicated they might
14 have a problem. But these are the ones who we thought were
15 worth questioning to see whether there's some way that they can
16 be accommodated or they can accommodate this schedule. So we
17 have a mix here.

18 But essentially, we have 50 of the top contenders, we've
19 tried to do. The parties did agree to meet and confer to see
20 if there were certain prospective jurors whose views seemed to
21 be so strongly held that they should be voir dired outside of
22 the presence of the other jurors as to prevent any kind of what
23 we call sort of contamination, cross-contamination or taint,
24 influencing other jurors in a way that might cause a problem.

25 And my hope and I think your hope was that we could agree,

PROCEEDINGS

1 we could identify those -- or you could identify those jointly.
2 We could save those for potential voir dire, put them at the
3 back of the list.

4 Having received your lists, I see there is overlap on four
5 of those jurors, Prospective Jurors No. 60, 126, 175 and 196.
6 But there's -- the lists don't overlap with respect to others.
7 So the plaintiff has identified several others, I think four
8 others, who are not part of that group of four. And the
9 defendants have identified nine. So there's -- we have some
10 disagreements.

11 Let me ask whether the parties have any further thoughts,
12 or have you met and conferred about that process?

13 **MR. SPIRO:** Good morning again, Your Honor. When we
14 left court at our last session, and as the Court is aware, I
15 raised the concern and objected many times to certain of these
16 individuals sitting. One reason was, of course, that I don't
17 think that somebody that professes a strong dislike or a
18 personal animus towards another person should be sitting in
19 judgment of them.

20 But the other issue I raised was the concern that those
21 jurors would pollute, essentially, the panel. And --

22 **THE COURT:** Which is why you went through this
23 process. Go ahead.

24 **MR. SPIRO:** Which is exactly why we went through this
25 process. And the Court shared -- plaintiffs, frankly, shared

PROCEEDINGS

1 that concern. The Court shared that concern. And we all had
2 an understanding and an agreement that the "radioactive"
3 jurors, as we were referring to them, would not be -- would be
4 pushed to the end simply so that we could do an efficient
5 process here, and not risk contaminating the rest of the panel.

6 Obviously the Court is aware we moved to change venue. We
7 have grave concerns in this case about sitting a fair and
8 impartial jury. And it seemed to us that the solution that we
9 all agreed to on the last court appearance made sense, and
10 alleviated at least some of the concerns we had. And we didn't
11 make various other applications in reliance upon that
12 agreement.

13 So, we were surprised to see the plaintiff retreading that
14 and trying to add other categories of individuals to their
15 list. Didn't make much sense to us; wasn't in line with the
16 agreement that we reached.

17 So what I would say is sure, as to the four we have
18 agreement about, they can go to the end. But I think that the
19 Court should also do what the Court was intending to do, which
20 is to use the Court's own judgment to move certain people that
21 are at risk of contaminating the jury -- and in line with our
22 agreement -- to the back of the group so that we can proceed in
23 an orderly and fair fashion.

24 You know, in cases, it's always -- it's always going to be
25 that not all sides agree on something, and I'm sure that there

PROCEEDINGS

1 will be Court rulings that affect both sides and that both
2 sides aren't happy about. But it strikes me that at this part
3 of the process, fairness has to be of paramount importance. I
4 think this is what we ought to do. It's what we agreed on
5 doing, and frankly, the defense relied and would have made
6 other applications, had we not agreed.

7 So that is what we're asking. We're asking the four that
8 we agreed to, sure. I mean, I don't have to tell the Court
9 that the plaintiffs are agreeing to folks that are already at
10 the end of the list, sort of to feign agreement, but it's
11 neither here nor there.

12 The Court had a list that the Court put in the record of
13 jurors that the Court identified as radioactive. Those jurors,
14 we asked not to even be here. But if they're going to be here
15 they should be at the end, per the parties' agreement, and --
16 and for fairness.

17 **THE COURT:** All right. So I have a plan, and then I
18 want both sides to react.

19 I think one way to do this, a good way to do this is take
20 the four that you all agree on and do to them or with them what
21 we had talked about. They would be put at the end of the list,
22 and called upon only if we need to reach that part of the list.

23 There are others who I think can be voir dired without a
24 substantial risk of contamination. I've identified seven of
25 those. I'll give you those in a minute.

PROCEEDINGS

1 Then there are six or so in addition to those four, who I
2 think have expressed strong enough views that they should be
3 voir dired out of the presence of the other jurors.

4 I think that -- I will tell you who they are. They are
5 Jurors No. 36, identified by the plaintiff, who has said
6 positive things about Mr. Musk. 37 -- 39 -- so 36, 39. 65 --
7 I'm not even sure why 65 is on the list, unless I'm missing
8 something. That person didn't seem to have any particular
9 views.

10 74, who simply said "Up in the air." 40, who simply said
11 that Mr. Musk appears to be not liked by a lot of people, or
12 something to that effect, but not very specific.

13 No. 50, who said they had mixed feelings, positive and
14 negative, not particularly happy with what has gone on at
15 Twitter. But nonetheless, I don't think those views are
16 particularly intense.

17 And then 131 who simply said -- he used the word
18 "overrated." Whatever that means. Those to me seem like soft
19 questions that can be examined without a substantial risk of
20 contamination.

21 Other jurors -- 79, who is a little more intense, 97 who
22 used the word "arrogant, irrational." 101 -- actually, 101 --
23 I have 101, I've forgotten what -- "arrogant," they used the
24 word "arrogant."

25 118, "don't like him." As opposed to saying he's not

PROCEEDINGS

1 liked by many, is saying "I don't like him."

2 24, "He sucks."

3 And 150, who used the adjective "crazy."

4 And so when feelings are that personal -- we don't know
5 what the basis is, and it may be, you know, we'll find out.

6 Those are the ones that I think should be voir dired separately
7 outside the presence of the pool.

8 So let me get your reaction to that.

9 **MR. APTON:** Your honor, one of the things we wanted to
10 do when we agreed to this agreement the other day was avoid
11 having to spend a lot of time on voir dire for particular
12 jurors to make this an efficient process. So that is why we
13 submitted the list that we did, because it included people who
14 did express soft feelings, as you say, against Musk, but as
15 well as people who expressed harder feelings towards this case
16 in general that we thought we would want to question a little
17 bit more.

18 The list that Your Honor proposed of the soft voir dire,
19 is it the Court's intention that we voir dire these folks with
20 the rest of the group in general?

21 **THE COURT:** Yes.

22 **MR. APTON:** And then the stronger, the second pronged
23 category, we push those to the end and then --

24 **THE COURT:** We would bring them in individually after
25 we've excused the rest of the pool, give the pool a break. And

1 rather than trying to do a sidebar, which I think is awkward,
2 and having people sit around, we would just simply have them
3 come in the courtroom one at a time.

4 **MR. APTON:** Sure. Your Honor, with respect to one of
5 the jurors that you listed in the soft.

6 **THE COURT:** Yeah.

7 **MR. APTON:** No. 65.

8 **THE COURT:** Yeah.

9 **MR. APTON:** There is a particular issue that we wanted
10 to raise with the Court.

11 **THE COURT:** Okay.

12 **MR. APTON:** Whether it be now or through a sidebar.

13 **THE COURT:** Well, unless there's something
14 particularly sensitive and personal, that should not be raised
15 in public. Maybe tell me what that is.

16 **MR. APTON:** It may be better just to do the sidebar,
17 out of caution.

18 **THE COURT:** Okay. All right. Other than that.

19 **MR. APTON:** Other than that, Your Honor's proposal
20 sounds -- sounds okay.

21 **THE COURT:** Okay. Mr. Spiro?

22 **MR. SPIRO:** Yes. I understand the Court's proposal.
23 I would sort of note at the outset, I think it has certainly
24 changed since where we left things in the last session.

25 And I want to be clear about something that I think I have

1 repeated many times but -- because I think it goes to issues of
2 fundamental fairness, I'm going to say it once more, which is
3 simply that this is a concern that is really in this case, and
4 based on the vast majority of the responses that we saw in the
5 jury questionnaires, an issue anti-Mr. Musk, a visceral
6 reaction and a personal reaction that we saw throughout.

7 So what I would urge the Court to do is the Court's,
8 again, high-level plan, fine, and we don't have many objections
9 or concerns. There were two responses to two people that the
10 Court is now deeming soft that I would just ask, it would not
11 take more than probably two minutes total to simply ask Juror
12 No. 40 when they say that he's not likeable: What do you mean?

13 "Likeable," to the Court's point, could mean: I don't
14 like him but I could be fair, and it's a soft not-like. "Not
15 likeable" could also mean a soft way of writing into a
16 questionnaire: I hate him.

17 So I think that, again, we're talking a couple of minutes
18 -- this case has been proceeding for a very long time, it's a
19 very serious matter -- to just simply ask that person outside
20 of the presence of the panel what they mean. And then --

21 **THE COURT:** You want to move that person from soft to
22 hard?

23 **MR. SPIRO:** Again, I think it only takes a moment.

24 **THE COURT:** And then something else.

25 **MR. SPIRO:** And then the other person had a response

PROCEEDINGS

1 that said he has a mercenary personality. I don't know exactly
2 what that means. But to the degree that neither the Court nor
3 I is exactly sure what the juror means by that, I don't want to
4 have to ask in front of a full panel: What does a mercenary
5 personality mean to you, and do you think you can be fair?
6 This is Juror No. 50.

7 I don't know how to ask that question in a room of people.
8 And I don't want to trigger inadvertently a situation where
9 then I have to ask the Court to remove the panel or whatever
10 else.

11 I don't see why we wouldn't take 60 seconds to just ask
12 that person: "When you say 'mercenary,' what do you mean?"
13 And again, what I'm suggesting is a very slight change to the
14 Court's plan. And that's what we're asking for.

15 **THE COURT:** Okay.

16 **MR. APTON:** Your Honor, if I may, what Mr. Spiro is
17 suggesting is we take people out of order, push them to the
18 back of the line, and reorder the venires, we have it. The
19 same could be said from our perspective. For example --

20 **THE COURT:** Let me clarify. The ones that I propose
21 to voir dire outside the presence -- I'm not reorganizing them.
22 They keep their number. The ones you all have agreed to,
23 they're essentially going to the back of the list. So they're
24 -- 40 is still 40. So once we voir dire the person and they
25 say "Well, not likeable, I mean, a lot of people don't like

1 him; I actually think he's a good guy but..." you know, he's
2 staying in. Or she. Or whoever that is.

3 **MR. SPIRO:** We agree with that approach. That
4 approach is how we understand it, so I don't think it's --

5 **THE COURT:** It's just a question of whether we hear
6 that person in front of everybody, or hear that person --

7 **MR. APTON:** So Your Honor, with that, I understand.
8 But from our perspective, No. 74 has some very strong views.
9 And to voir dire that person in front of the pool, while they
10 may not be anti-Musk, so to speak, they do have very strong
11 views about class actions, tort reform. And that could be
12 problematic for the jury pool, for the same reason Mr. Spiro is
13 complaining about the folks that don't care for Mr. Musk.

14 **MR. SPIRO:** That's just not the case, Your Honor. And
15 most respectfully, that issue of some people like lawsuits,
16 some people don't like lawsuits, is -- is in every case.

17 We've all noted that this case is unique for the
18 consideration that we're talking about. The consideration we
19 reached agreement about last week, the consideration that the
20 Court has, itself, acknowledged. And because of that unique
21 consideration, we are doing something to protect this process,
22 and make it fair.

23 You're starting to talk about, you know, some people don't
24 like defense lawyers, some people don't like plaintiffs'
25 lawyers.

1 **THE COURT:** Right. Let me cut this off. I'm not
2 going to take some people out and individually voir dire them
3 because of their views about the criminal justice -- justice
4 system, class actions. Plaintiffs often -- you know, these
5 cases that damages are too high and that sort -- I understand
6 there is an issue there. That happens in every case I have.
7 There's always people who talk about McDonald's, the coffee
8 case, all that sort of stuff. We don't take them out of the
9 room just to ask them that. This is specifically because of
10 this case, the notoriety of the litigants in this case, that's
11 why I'm doing the extraordinary step.

12 So out of an abundance of caution, although I don't think
13 it's frankly necessary, I'll take 40 and 50 -- not going to
14 change the order, their numbers, but I will hear them outside
15 the presence of the -- of the pool. So that means we're going
16 to need one, two, three, four, five, six, seven, eight people.
17 I assume we're going to only spend three or four minutes on
18 each.

19 **MR. SPIRO:** (Nods head)

20 **THE COURT:** So what we'll do is after we've done what
21 we can, I'm going to excuse the jury, ask those eight to wait
22 out in the hall. We'll bring them in one at a time.

23 And out of respect for the time that people have to wait,
24 we're not going to spend hours on each -- you know, we're going
25 to zero in on it. I may ask the first question or something,

1 get it going, and then I'll hand it over to you all.

2 **MR. APTON:** So Your Honor, just one question for
3 clarification. Is it still the Court's intention to go through
4 hardship first?

5 **THE COURT:** Yes.

6 **MR. APTON:** Okay. And will the jurors be excused if
7 they do have a hardship exception at that point, and done?

8 **THE COURT:** I think that's probably what I'll do,
9 so -- rather than having people having to sit through, if it's
10 clear they have a hardship. Now, if there's -- there may be a
11 couple I may reserve judgment on. But my intent is to excuse
12 people.

13 So we'll probably take the hardship challenges first. And
14 I would like to do that outside of the presence of the jury.
15 We'll give them a break, go through the hardships, see what we
16 have got left.

17 **MR. APTON:** Very good.

18 **THE COURT:** And that will inform how deep -- deeply
19 this pool --

20 **MR. SPIRO:** Yes, Your Honor. Thank you.

21 **THE COURT:** All right.

22 **THE COURTROOM DEPUTY:** So we've got 44 so far.

23 (Off-the-Record discussion between the Court and Clerk)

24 **THE COURT:** Okay. So, so far we only have 44. As I
25 predicted, we were going to be a little short. I didn't think

1 we'd be that short. But, it is still a little early. There
2 was heavy traffic today. We'll give them a little bit of time.

3 The seven who did not fill out the questionnaires, of
4 those, I think none have shown?

5 **THE COURTROOM DEPUTY:** Correct.

6 **THE COURT:** Okay. So we're probably going to be on
7 the minus side, rather than the plus side. So we'll see what
8 we have. They were supposed to report at 8:00 or 8:30?

9 (Off-the-Record discussion between the Court and Clerk)

10 **THE COURT:** They were supposed to report at 8:00, so
11 we're half an hour behind and still missing 11 people.

12 Why don't we give them ten minutes or so, and we'll
13 reconvene at that point.

14 (Off-the-Record discussion between the Court and Clerk)

15 **THE COURT:** So we had told the Jury Administrator to
16 bring the jurors down at 9:00. So I guess that gives a half an
17 hour -- we'll give you an update as to how many show up. And
18 we will have -- maybe in about 15 minutes we'll get a sense of
19 numbers, which, which ones have shown, which ones haven't, so
20 we know who on the list is live, sort of.

21 **THE COURTROOM DEPUTY:** Yes.

22 **THE COURT:** All right. Anything else we need to
23 cover?

24 **MR. SPIRO:** Your Honor, can I just ask, as long as we
25 have a moment of down time?

1 **THE COURT:** Yeah.

2 **MR. SPIRO:** So that once the jury is here we don't
3 disrupt the process, just, if we could just explain visually
4 sort of how they sit. I assume it's that they just -- they go
5 in every other seat. And then where?

6 **THE COURT:** Okay, so one is going to be in the crier's
7 box (Indicating). They can also see the screen. Then they'll
8 be in these -- staggered, so we can fit eight in the box. The
9 ninth juror will have a chair right --

10 **THE COURTROOM DEPUTY:** No, we put nine there. With
11 the crier's box it'll fit nine.

12 **THE COURT:** Okay. We're going to fit all nine up
13 here. We're going to figure out a way of fitting nine up
14 there. There'll be some space between each one, hopefully.
15 That's my goal. But you don't have to look around the room
16 like some cases we have where they're seated around the
17 gallery. So they'll all be in the box.

18 **MR. SPIRO:** Got it. And then for selection it would
19 be once we're down to -- once the Court picks the first 15 or
20 once, through hardships, it goes 1 through 9, and then we go
21 all the way up 15 in this first row here, basically
22 (Indicating)?

23 **THE COURT:** Let me ask, which order are we going to be
24 in?

25 **THE COURTROOM DEPUTY:** After the box we start in the

1 first row over here.

2 **THE COURT:** On the left.

3 **THE COURTROOM DEPUTY:** On the left.

4 **THE COURT:** And then over to the right?

5 **THE COURTROOM DEPUTY:** Yes.

6 **THE COURT:** So you go all the way back on the left
7 side. And then the last group --

8 **THE COURTROOM DEPUTY:** It's going to go across.

9 **THE COURT:** -- to be on the right side. So first
10 group -- in sequence, the first group is here, second group
11 will be on the left side in the gallery, and the third,
12 numerically, will be on the right (Indicating).

13 **MR. SPIRO:** But will we -- it'll just be 15 at that
14 point?

15 **THE COURT:** No, I'm just thinking when they all come
16 in, all 44 or whatever we have. But they'll be in order.

17 **MR. SPIRO:** Right.

18 **THE COURT:** It'll be according to that list. So you,
19 you can direct your attention accordingly. So --

20 **MR. SPIRO:** I'll try.

21 **THE COURT:** So, what is your question, then?

22 **MR. SPIRO:** Once hardships are moved and we're through
23 that part of the process, I take it the Court is then saying
24 that we question -- let's say there's then 30 left.

25 **THE COURT:** Yes.

PROCEEDINGS

1 **MR. SPIRO:** The Court's not going to say we're going
2 to do 15; the Court's going to say whoever's left, they're all
3 live.

4 **THE COURT:** Yeah, they're all live. I don't do the
5 box thing where you just fill the box. It's a small enough
6 group where everybody's live.

7 **MR. SPIRO:** Okay.

8 **THE COURT:** But you know the order, so if you want to
9 spend a lot of time on No. 30, that's up to you, but --

10 **MR. SPIRO:** Fair enough. And then the way that
11 strikes work, I just want to make sure I understand, they
12 strike, and then we have two, and then they have --

13 **THE COURT:** Two.

14 **MR. SPIRO:** -- two, and then I have one.

15 **THE COURT:** Yeah.

16 **MR. SPIRO:** And you just do the first eight to sit the
17 jury, so you say: Do you have any challenges, 1 through 8?
18 They give one, I give two, and so on and so forth.

19 Is that --

20 **THE COURT:** Whoever's left standing after you've
21 exercised your challenges is the first -- I'm going to seat
22 nine. First nine will be our jury.

23 **MR. SPIRO:** You're seating nine, and then plus
24 alternates?

25 **THE COURT:** No alternates.

1 **MR. SPIRO:** You're not using alternates.

2 **THE COURT:** Nine, in civil court, is just -- there are
3 no alternates. Not like criminal. So it's just nine.

4 **MR. SPIRO:** Right. Well, I mean -- right. I mean,
5 the Court's obviously -- some do it slightly differently, so
6 I'm just making sure I follow.

7 **THE COURT:** Yeah. All nine will participate.

8 **MR. SPIRO:** Understood.

9 **THE COURT:** So my math, you should be -- once we
10 excuse for cause and hardship and all that sort of stuff, you
11 should be concerned about the first 15. If you want to use a
12 strike on -- on the last one, that's up to you. But everybody
13 beyond 15, frankly, will be irrelevant.

14 **MR. SPIRO:** Right. So, so do you ask: Do you have
15 any strikes, 1 through 9? They do one, if --

16 **THE COURT:** You can strike anybody you want. You can
17 strike No. 14, if you want. I mean --

18 **MR. SPIRO:** So, so, if they -- do I forfeit one or
19 both strikes if I don't use them? I don't think I do, right?

20 **THE COURT:** No, you don't forfeit, but if you pass --
21 if you're talking about if you pass and then they pass, then
22 that's it.

23 **MR. SPIRO:** Right. Of course.

24 **THE COURT:** But if you pass, and they exercise, you
25 still --

1 **MR. SPIRO:** Get them, right.

2 **THE COURT:** -- keep yours.

3 **MR. SPIRO:** Okay. Now I understand the system. I
4 appreciate it. Thank you.

5 **THE COURT:** Right.

6 **MR. APTON:** So Your Honor, if Mr. Spiro passes twice
7 in a row, he can then use all three at the end?

8 **MR. SPIRO:** Yeah. I don't forfeit --

9 **THE COURT:** That's right. There's no forfeiture. But
10 if he passes, every time he passes, he risks your passing and
11 saying: That's it, I'm happy. And vice-versa.

12 **MR. APTON:** Question. If 79, who's on the strong
13 list, we want to voir dire I guess individually --

14 **THE COURT:** Yeah.

15 **MR. APTON:** So if 79 enters the courtroom, should
16 Mr. Spiro and I avoid asking questions to 79?

17 **THE COURT:** Yeah, yeah. I mean, you can ask
18 questions, other questions. But attitudinal questions that
19 might elicit why that person feels strongly one way or the
20 other, yeah, let's save that until -- until we get that person
21 individually voir dired.

22 **MR. SPIRO:** Well, they're going to go before we do our
23 more fulsome voir dire. They're going to see the Court private
24 -- they're going to see the Court at sidebar before we do our
25 fulsome voir dire. So that if they are not suitable jurors for

1 this case, we all don't waste --

2 **THE COURT:** Okay, well, that's interesting.

3 **MR. SPIRO:** That's how I assume the Court is doing
4 that.

5 **THE COURT:** Well, that makes sense. After we do
6 hardships --

7 **MR. SPIRO:** Exactly.

8 **THE COURT:** -- it makes sense, get these folks out of
9 the way so we don't have to ask them again. Or they might, in
10 your questioning of the whole panel, something -- they blurt
11 out something, we can address that.

12 So after we have individually voir dired -- up to ten or
13 whatever the number is, nine, then we will do the cause
14 voir dire for the whole panel.

15 **MR. SPIRO:** Understood. Thank Your Honor.

16 **THE COURT:** We may have excused some of them, or we
17 may not have, at that point.

18 **MR. SPIRO:** Understood. Thank you.

19 **THE COURT:** Okay?

20 **MR. APTON:** And Your Honor, the nine that we will be
21 voir diring individually, can we get that list one more time?

22 **THE COURT:** Yeah. No. 40, 50, 79, 97, 101, 118, 124,
23 and 150. That's actually eight, isn't it?

24 **MR. APTON:** Yeah.

25 **THE COURT:** Good.

1 **MR. APTON:** Your Honor, can we discuss Juror No. 65
2 quickly?

3 **THE COURT:** Yeah. And you want to do that at sidebar,
4 for privacy purposes?

5 **MR. APTON:** Yeah. It may not be necessary but --

6 **THE COURT:** Just in case. I don't want to cause a --
7 well, give us a chance to try our sidebar equipment here.

8 (The following proceedings were heard at sidebar)

9 **THE COURT:** Can you hear us? Okay.

10 **MR. APTON:** Your Honor --
11 (Reporter clarification)

12 **MR. APTON:** Sorry, Adam Apton.

13 We were doing background research on Dennis McClinton,
14 Juror 65.

15 **THE COURT:** Yeah.

16 **MR. APTON:** He appears to have prior criminal
17 convictions, felony convictions.

18 **THE COURT:** Yeah.

19 **MR. APTON:** And so we're not quite sure whether that
20 disqualifies him as a juror.

21 **THE COURT:** Yeah, normally does.

22 **MR. APTON:** So we don't know how he made it into the
23 pool. But --

24 **THE COURT:** Unless he got -- I'm not sure what the
25 federal system is, whether you can have that expunged for

PROCEEDINGS

1 rehabilitation, whatever it is to get back your civil rights, I
2 don't know if --

3 **MR. APTON:** We just want to make sure that we are not
4 baking into this trial a serious problem.

5 **THE COURT:** Yeah, so we didn't ask that question on
6 the survey. That's why he didn't answer it.

7 **MR. APTON:** That's correct.

8 **THE COURT:** Well, but he should have been asked that.

9 **MR. SPIRO:** I would think -- normally, in the ordinary
10 course, and then they have the -- they have better information
11 than we have. In the ordinary course, a juror about
12 citizenship and things like that is asked if there are any
13 disqualifying factors. So I don't know -- you know, I can't
14 say as I'm familiar with San Francisco, but --

15 **THE COURT:** Yeah. We normally ask the question: Are
16 you a citizen, blah, blah, blah. Maybe he missed it, or maybe
17 he somehow -- I don't know if either of you are familiar with
18 whether there is a recertification or rehab?

19 **MR. SPIRO:** Sure.

20 **THE COURT:** We could take him, sidebar.

21 **MR. APTON:** Okay.

22 **THE COURT:** Clear that one out. I could add him to
23 the individual voir dire list for that question.

24 **MR. SPIRO:** Okay. That would be -- I don't object.
25 There's no objection if the Court wants to take something at

1 sidebar.

2 **MR. APTON:** Is there any way to find out whether he
3 has these convictions or -- or -- you know, at the outset, so
4 we don't have to waste time with him at sidebar?

5 **THE COURT:** I don't have that ability.

6 **MR. SPIRO:** Okay. And then, anything related to
7 opening, if we wanted to be heard briefly, do you want to get
8 that over with now?

9 **THE COURT:** Yeah, might as well do that now. Okay,
10 thank you.

11 (Conclusion of sidebar discussion; the following
12 proceedings were held in the presence and hearing of the Jury
13 Venire)

14 **THE COURT:** Okay. For the record, we are going to add
15 No. 65 to the voir dire list. So that, that will be 9.

16 **MR. APTON:** Your Honor, you mean the individual
17 voir dire?

18 **THE COURT:** The individual voir dire, yeah.

19 All right. Any other issues, housekeeping matters
20 regarding openings, since we've got a few minutes, that we want
21 to take up at this point?

22 **MR. SPIRO:** Yes, Your Honor. Again, this is Alex
23 Spiro on behalf of the defendants. One of these issues is a
24 more general point, one is a specific evidentiary point.

25 On the general, as the Court's aware, plaintiffs in some

1 of their original slides mentioned the summary-judgment ruling.
2 And the Court we think properly excluded those.

3 In light of the Court's various rulings in this case, I
4 would rather be safe than sorry and just front that we assume
5 that the plaintiffs are not going to mention other things that
6 -- or, or around the edges of other things, that would be
7 problematic in terms of the pretrial rulings and issues of
8 fairness.

9 So for example, you know, we assume that the issues
10 regarding any and all disputes with the SEC would not be in
11 opening. We assume that, you know, that recent events at
12 Twitter are not going to be in the opening or any questioning
13 of any witnesses, and that subject is not going to be part of
14 this trial.

15 And then finally, you know, I just want to point out,
16 obviously, plaintiffs have the burden. We don't have the
17 burden to even put on a case. The -- no mention should be of
18 our witnesses that they don't intend to call or elicit
19 testimony from.

20 So for example, we may or may not call expert witnesses.
21 We may or may not call certain individuals. And I see
22 sometimes -- improperly, candidly -- that in openings
23 plaintiffs' attorneys will reference that. It is actually
24 improper burden-shifting. But beyond that, they don't actually
25 know that we're going to call those witnesses.

PROCEEDINGS

1 Those people are on our witness list, but they should not
2 be commenting on that testimony because they can't possibly
3 have a good-faith basis or ability to say that that's what's
4 going to happen, because they don't even know that we're going
5 to, in fact, have a case or call those individuals.

6 So those are the sort of high-level points of certain
7 topics that should just not be in the opening. There was one
8 specific comment -- and forgive me, obviously we're getting
9 used to the Court's procedures with objections. And I was able
10 to review Your Honor's objections, and it seems like a very
11 efficient process, frankly. While one I'm not used to, it was
12 very helpful to get that out of the way with the Court's order,
13 and we appreciate the time the Court took.

14 The Court ruled as to Exhibit 121, which are the text
15 message communications between Mr. Yasir and Mr. Musk. And I
16 understood the Court's ruling, I understood the Court's ruling
17 to essentially be is that Mr. Musk, as a party opponent, these
18 are his statements, and that the text messages that come to him
19 affect his mind, his state of mind, et cetera. There's a
20 couple, and I don't know if the Court's had a chance to look at
21 the entire text chain. You just see snippets in their opening
22 presentation.

23 So if the Court was willing, I would like to provide at
24 some point the entire text chain so that the Court can
25 perfectly see what I'm referring to. But there are some

PROCEEDINGS

1 messages that are not part of a colloquy. They are just sort
2 of, I mean, I would submit, self-serving statements but they
3 are just their own statement on the state of the world, Right?
4 From Yasir.

5 And one particularly, just to give you an example, that is
6 such a statement, not part of a conversation, and number two,
7 has nothing to do with scienter, is one of these, which is
8 Exhibit 121 at TE121-13, which is in the slide presentation.
9 And that's the message on August 13th. So almost a week after
10 the tweets in question. And it's just his assessment, whether
11 truthful or not, of his opinion of a blog post. Again,
12 truthful or not.

13 **THE COURT:** What is the number?

14 **MR. SPIRO:** It's Exhibit 121 at TE121-13.

15 **THE COURT:** Dash-13?

16 **MR. SPIRO:** Yes, Your Honor.

17 **THE COURT:** So which line?

18 **MR. SPIRO:** It's the message that starts:

19 "Elon, I'm personally surprised..."

20 Does the Court have the message in front of the Court?

21 **THE COURT:** Yep.

22 **MR. SPIRO:** So this is simply this individual's just
23 giving his view, again, truthful or not, of the blog post.
24 That's exactly the kind of statement that courts do not allow
25 because it's rank hearsay. It's not part of a conversation.

1 It's not anything but a witness who's decided not to appear in
2 court, who the plaintiffs have not called or even attempted to
3 call.

4 And you're just back-dooring his statement about a blog
5 post, again, truthful or not, into this trial for the truth of
6 the matter asserted. It can't possibly be for anything else.
7 And any suggestion --

8 **THE COURT:** Well, it's just not about the blog post,
9 it's about his -- his statement at the time about where things
10 are at, what he was waiting for, where -- what information was
11 -- you know, where that information stream is.

12 **MR. SPIRO:** But that is exactly the point. That is,
13 the Court is making my exact point, which is that's for the
14 truth of the matter asserted, and that's actually not true.
15 What he is saying in this message is demonstrably not true.
16 And if he had come to court, we would have proven it's not
17 true.

18 And we're using a message -- in opening statement, no
19 less -- to say -- to put something in front of the jury which
20 is demonstrably false, of a witness that we know right now is
21 not going to be called. And again, it's not part of -- it has
22 to do with the accuracy of a blog post, which is not even a
23 charged statement in this case, so scienter about the blog post
24 is not an issue in this case. There's no response from
25 Mr. Musk to this.

1 **THE COURT:** Let me hear quickly your response, on --
2 on both the avoiding direct reference to court rulings; number
3 two, the question about any comment on the defendant's
4 expecting evidence in your opening. And then this 121.

5 **MR. PORRITT:** Thank you, Your Honor. I can -- I fully
6 understood the limitations --

7 **THE COURT:** You can take the mask off if you're --

8 **MR. PORRITT:** Thank you. Just want to make sure.
9 We've had some audio issues a bit this morning.

10 We fully understood the limitations on opening statement
11 so that's -- Mr. Spiro's concerns are -- you know, understood,
12 he hasn't seen my opening statement, so he can make them in the
13 abstract. But --

14 **THE COURT:** Just to make clear, my ruling applies
15 during trial, too. You're not -- you know, not supposed to
16 make any direct references to court rulings. The substance is
17 okay, but what -- what they have to assume. But, no statement
18 about: The Court ruled that.

19 **MR. PORRITT:** Okay. Understood.

20 **THE COURT:** Okay?

21 **MR. PORRITT:** That is -- and, although we can refer to
22 the Court's directions that you will have made to the juror
23 before -- before my opening statements.

24 **THE COURT:** Yeah. That you are to assume, yes.

25 **MR. PORRITT:** Okay. But we can say "As you heard --

PROCEEDINGS

1 as the Court has directed you, you are to assume," for
2 instance?

3 **THE COURT:** That's okay, as long as you're not saying
4 that the Court made a ruling earlier.

5 **MR. PORRITT:** Understood. The words "ruling,"
6 "found," "findings" do not appear in reference to the Court.
7 And the other interest in the general comments Mr. Spiro made,
8 as I understand the Court's ruling, reference to the fact of an
9 ACC investigation is legitimately part of the factual record in
10 this case, because that is obviously part of it. But we don't
11 make any reference, of course, to the fact that a complaint was
12 brought, the fact that the settlement was reached. There will
13 be no reference to that, which we fully understand, and have
14 incorporated. So that's --

15 **THE COURT:** What about -- what about reference to
16 their experts?

17 **MR. PORRITT:** Yeah, I'm not making -- not proposing to
18 make any reference to their experts, so --

19 **THE COURT:** So you're not going to make any reference
20 to their -- reference in your opening -- to their experts in
21 your opening statement.

22 **MR. PORRITT:** No. No, Your Honor.

23 **THE COURT:** Okay. What about 121, this issue about --

24 **MR. PORRITT:** Your Honor, I think it's sort of -- you
25 have set forth an efficient process. And if we're going to be

PROCEEDINGS

1 keeping on re-litigating endlessly objection after objection
2 after objection once Your Honor has ruled, this is going to be
3 a very long trial. This is long enough already.

4 **THE COURT:** Yeah. And I may not hear any more after
5 I've ruled, but I do want to get your response. This one is --
6 why isn't this rank hearsay?

7 **MR. PORRITT:** Well, I don't think it's rank -- I mean,
8 essentially I think it's effect on the listener, for instance,
9 Your Honor. We listed -- made submissions on this already, on
10 effect of why we think it is not necessarily hearsay.

11 It's also -- literally probably also meets the definition
12 of an excited utterance, as it's literally probably within
13 minutes of seeing the blog post come out. It is in the context
14 of a conversation; it is a response to the blog post, which is
15 a statement by Mr. Musk. So that while it may not all be
16 contained within the text messages, it is in the context of
17 public statements, statements being made in connection with
18 this blog post by Mr. Musk regarding the transaction.

19 It is also relevant in terms of their materiality
20 argument, in terms of the current status of negotiations with
21 the public investment firm.

22 **THE COURT:** Well, that's where -- then you're taking
23 it for the truth of the matter asserted, and that's where you
24 get into a hearsay problem.

25 **MR. PORRITT:** Well, it shows that they are asking for

1 information, continuing to ask for information, Your Honor.
2 Because that request which has been made earlier and which --
3 another text that Your Honor has also allowed to be mentioned
4 to be --

5 **THE COURT:** Well, that's where I'm hearing from the
6 other side that that's a false portrayal of what was going on
7 at the time. So any statement about information expected to be
8 exchanged and complete, et cetera, et cetera, is an assertion
9 of fact by a witness who is not appearing, and that sounds like
10 using it for the truth of the matter asserted.

11 **MR. PORRITT:** I mean, the request is apparent in the
12 document, itself, Your Honor, so I'm not quite sure how they
13 can say the request wasn't made, when it's sitting there on the
14 face of the document.

15 **THE COURT:** Here's what I'll do. I ruled on this.
16 And if I didn't clarify then, this is going to be admitted
17 because it goes to the state of mind of Mr. Musk.

18 But, if you're going to use this, you need to explain,
19 because I'm not -- you know, this is not evidence, and I would
20 normally give a limiting instruction, it can't be used for the
21 truth of the matter asserted. So you're going to have to
22 qualify that.

23 And if you don't, I'll hear an objection, and I'll make
24 that clarification. So you would be wise to incorporate that
25 into your statement.

1 **MR. PORRITT:** Understood.

2 **MR. SPIRO:** Your Honor, one final comment, just for
3 the record. Again, I understood the Court's ruling, but it
4 referred to several messages. And so I think it's fair, given
5 the stage that we're at and these things are not admitted, to
6 raise this. So I don't think it runs afoul of the general
7 edict.

8 The other thing is, again, and just so the record's very
9 clear on this, plaintiff's counsel has just told the Court that
10 the reasons that he believes it irrelevant are inadmissible
11 hearsay reasons.

12 **THE COURT:** Not all of them.

13 **MR. SPIRO:** And --

14 **THE COURT:** Not all of them. Not all of them. Some
15 of them.

16 **MR. SPIRO:** Well, I mean, I do know he -- I do concede
17 he threw some other things against the wall, like that it's an
18 excited utterance, which of course it's not, because he doesn't
19 have a reason it would be admissible in a courtroom.

20 But I would finally say this. It can't be at this stage
21 for the affected hat on Mr. Musk. It's not possible. There's
22 no message after it, Your Honor, right? So they're ending the
23 text message chain without even including responses. So it's
24 also incredibly misleading.

25 During this text exchange, which is why I'm offering to

PROCEEDINGS

1 show the Court the entire exchange, Mr. Musk is saying in sum
2 and substance to the PIF: This isn't true; you're a liar; you
3 know we had a deal. And they are not showing those messages to
4 the jury at this phase.

5 A court would never allow, because of the rule of
6 completeness and other rules, ever, snippets of text messages
7 that are otherwise hearsay to come into evidence. And again, I
8 will just say again, it can't possibly be the effect on the
9 listener when there's no message after it --

10 **THE COURT:** All right, Mr. Porritt, is there -- just
11 on that question, the effect of listener is the one non-hearsay
12 analysis that you've provided, and yet this is after the
13 tweets, and so there are no further tweets that are subject of
14 the -- of the claim here.

15 So how, how was the listener, i.e. Mr. Musk's state of
16 mind relevant at that point?

17 **MR. PORRITT:** Um, I think it once again goes to the --
18 it's -- it once again goes to the effect of what Mr. Musk then
19 did after that. It goes to his statements to the board. It
20 goes to his statements -- his state of mind for the rest of
21 that week, for the rest of the class period, Your Honor.

22 So I think it's -- it's -- there is a continuation of the
23 tweets, Your Honor. So I mean, to be honest, Your Honor, this
24 is not a major part of my opening. So I'm quite happy; I'll
25 just pull the slide. I don't want to bog down the Court.

1 We've got a jury to select in five minutes so --

2 **THE COURT:** Yes. Let's pull that slide. And we will
3 have to litigate this --

4 **MR. PORRITT:** We'll park it. In the context of
5 testimony, I think it will be more effective, Your Honor.

6 **THE COURT:** Thank you. Appreciate that.
7 All right. So, any further word from the jury?

8 (Off-the-Record discussion between the Court and Clerk)

9 **THE COURT:** All right. There was a little bit of
10 delay at the jury office. We're not getting all the numbers.
11 So I'm going to wait to get a complete list of who is there. I
12 don't want to give you an incomplete list at this point.

13 So we will recess for a bit. And as soon as we get
14 further word, we will be back on. Okay?

15 **MR. PORRITT:** Thank you, Your Honor.

16 **THE COURT:** Thank you.

17 **THE COURTROOM DEPUTY:** Court is in recess.

18 (Recess taken from 8:58 a.m. to 9:18 a.m.)

19 **THE COURT:** Okay. All right. Back on the record. We
20 do have the -- stay seated. We have the list now, which
21 Vicky's going to print out, and we'll go through that so you'll
22 know who's here.

23 **MR. APTON:** Your Honor, there is one issue that I
24 wanted to raise. It's an open issue about vaccine and booster.
25 What did the Court decide to do? Because that is important, at

1 least with respect to Juror 65 -- I'm sorry, 39.

2 **THE COURT:** 39?

3 **MR. APTON:** He is vaccinated, but not boosted yet. He
4 works in a hospital, and so could be exposed.

5 **THE COURT:** I'm accepting people who are vaccinated,
6 even if not boosted.

7 **MR. APTON:** Understood.

8 (Document tendered)

9 **MR. APTON:** Your Honor, this is the list of the jurors
10 who --

11 **THE COURT:** Who are actually here.

12 **MR. APTON:** Okay.

13 **THE COURT:** Yeah.

14 Okay. My quick read is they're all here except for
15 Prospective Jurors -- No. 65, I don't see on the list, 127, and
16 128. So I get 52.

17 Do your numbers agree?

18 **MR. APTON:** Yes, Your Honor, looks right.

19 **THE COURT:** All right. So that's pretty good,
20 actually. So, that obviates No. 65, having to voir dire 65.
21 And otherwise, I think we're set to go.

22 So unless you see any reason not to, I think we should
23 proceed. And, bring the jurors down if you're done with their
24 orientation.

25 **THE COURTROOM DEPUTY:** I have her bringing them up.

JURY VOIR DIRE

1 **THE COURT:** Okay. So I'll go off the bench. Bring
2 them in, give them the oath, and then bring me in when they are
3 ready.

4 **THE COURTROOM DEPUTY:** Court is in recess.

5 (Recess taken from 9:23 a.m. to 9:59 a.m.)

6 (Jury venire panel brought in and placed under oath.)

7 **THE COURTROOM DEPUTY:** All rise. Court is now in
8 session, the Honorable Edward M. Chen presiding.

9 **THE COURT:** Please be seated. Thank you.

10 **THE COURTROOM DEPUTY:** Court is calling the case In
11 Regarding Tesla Securities Litigation, Case No. 18-4865.

12 Counsel, please state your appearance for the record,
13 beginning with plaintiffs.

14 **MR. APTON:** Good morning, Your Honor. My name is Adam
15 Apton, counsel for plaintiffs. And with me are my colleagues
16 from Levi & Korsinsky, as well as Mr. Fuentes and Ms. Patrick.

17 **THE COURT:** All right. Thank you, Mr. Apton.

18 **MR. SPIRO:** Good morning, Your Honor. My name is Alex
19 Spiro, and I'm here on behalf of the defendants, with my
20 colleagues. Thank you.

21 **THE COURT:** All right, thank you, Mr. Spiro.

22 All right. Good morning, ladies and gentlemen. On behalf
23 of the Federal District Court for the Northern District of
24 California, let me welcome you. I am Judge Chen and I will --
25 I am a District Judge for this Court, and will be presiding

JURY VOIR DIRE

1 over the trial in this case.

2 You are summoned as for possible jury service in a civil
3 case. As you know from the questionnaires that you've filled
4 out, this case is expected to last approximately three weeks,
5 starting today, with the presentations of evidence we hope to
6 be completed, we expect to be completed by either February 1st
7 or February 3rd, followed by jury deliberations. So this is
8 the time set for the selection of jurors in Civil Case No.
9 C-18-4866 (sic), In Re Tesla Securities Litigation.

10 Are the plaintiffs ready?

11 **MR. APTON:** Yes, Your Honor. Plaintiffs are ready.

12 **THE COURT:** All right. Is the defense ready?

13 **MR. SPIRO:** Yes, Your Honor.

14 **THE COURT:** Thank you.

15 Ladies and gentlemen, the remarks that I'm about to make
16 apply to those of you that have been summoned to jury service.
17 As I mentioned, the term of court for which you have been
18 requested to serve as jurors is anticipated to last
19 approximately three weeks.

20 After the jury is selected, we will start trial. We start
21 each morning at 8:30 a.m., and we will generally go until
22 2:00 p.m. each day that we are in trial. So you are free after
23 2:00.

24 We will take about 20-minute breaks every hour and a half.
25 And we will have trial every day except Thursdays, when the

JURY VOIR DIRE

1 Court will be occupied with other matters.

2 Also, we will not have trial on Monday, January 30th, the
3 one exception.

4 So you will be free each day by 2:00, and on Thursdays,
5 when you will have the entire day free.

6 So let me begin by saying that the Court understands and
7 appreciates that being summoned to service as a potential juror
8 is an imposition on your time. The Court is also aware of your
9 concerns that you may have about health and safety in light of
10 the COVID-19 pandemic. I've read each of your questionnaires
11 and understand fully your concerns, and indeed, the parties and
12 the staff of this Court shares those concerns as well. So I
13 want to emphasize the immense gratitude of the Court and on
14 behalf of the parties for your willingness to respond to this
15 call for jury duty.

16 I do want to assure you that we have taken a number of
17 steps to address the COVID risks. First, we are only going to
18 seat jurors who have been vaccinated. We also will maintain
19 social distance between the jurors. As you can see, normally
20 we have 14 people in that box and we are spacing people out to
21 provide for some social distancing.

22 Second, we ask each attendee to self-screen. So if you
23 have any of the symptoms appearing on the list that previously
24 was given to you, you are asked to report this and not come to
25 court. This applies to jurors even if they have already been

JURY VOIR DIRE

1 seated in the case.

2 Third, all participants, including the attorneys, Court
3 staff, jurors will wear masks except for witnesses and the
4 attorney examining the witness and me when I'm giving you
5 instructions. The witness box, as you can see, has a Plexiglas
6 barrier and a high-grade HEPA filter next to the witness.

7 Attorneys and witnesses will either be vaccinated or show
8 proof of a negative test before entering the courtroom.

9 Fourth, the Court has consulted with outside specialists
10 to review our protocols and ventilation system. We have worked
11 with the GSA, the federal agency which manages the building, to
12 turn on the air prior to the start of the each day and run it
13 after everyone leaves. Our system utilizes high office-quality
14 air filters and the system is designed to bring in fresh air
15 continuously. We have also placed additional HEPA-grade
16 filters, portable filters around the courtroom.

17 Fifth, you will be here at the courthouse only half a day,
18 between 8:30 and 2:00, and not all the day, so we are limiting
19 the hours in the courtroom.

20 Finally, should you serve on the jury, you will be
21 reimbursed for mileage, whether you drive or take public
22 transportation. For those of you who can and choose to drive
23 instead of taking public transportation, in addition to mileage
24 reimbursement, we will also reimburse for bridge tolls and
25 validated parking at nearby garages.

JURY VOIR DIRE

1 Nonetheless, we are aware that the imposition of jury
2 service imposes on you -- we are aware of the imposition jury
3 service imposes on you, especially if you feel that there are
4 added safety risks. But I ask you to consider not only the
5 steps we have taken to minimize that risk, but also the
6 importance of jury service and the rights of those that are at
7 issue. Litigants have the right to have their cases decided by
8 a jury of their peers, not by high government officials. Trial
9 by jury embodies in real-world terms the concept of government
10 by the people and for the people and of the people.

11 Laws keep -- jurors keep law in the United States close to
12 the people, preserving a guarantee in freedom and democracy
13 that many in the world are still struggling to achieve. The
14 jury process reflects the collective conscience of the
15 community.

16 Now, our system entitles the parties to an impartial jury
17 of their peers to resolve factual issues raised in the case.
18 In order to obtain such a jury, we call on persons throughout
19 the area which comprises this federal judicial district. These
20 persons are selected at random to assure that they represent a
21 fair cross-section of the community. It was this random
22 process that brought you here today.

23 It is important that all of you who are called make every
24 effort to accept the responsibility to serve even in these
25 challenging times. Only in this way will the litigants in this

JURY VOIR DIRE

1 court receive the trial by their peers which is so fundamental
2 to our judicial system. Thus, your willingness to serve as
3 jurors is not only appreciated by the Court and the parties,
4 but is also necessary in order for our judicial system to
5 continue to work.

6 Ms. Ayala, has the oath been administered?

7 **THE COURTROOM DEPUTY:** Yes, it has, Your Honor.

8 **THE COURT:** All right. Ladies and gentlemen, as I've
9 stated, the case for which we are selecting the jury today is a
10 civil trial. A jury for a civil trial in this case will be
11 composed of nine persons. So our task today is to select among
12 you nine persons to serve as jurors to try this case.

13 Now, we have the questionnaires that all of you have
14 filled out and I -- we appreciate that and the time that you
15 spent doing so. We will use the questionnaires to find out
16 additional information, to clarify your answers and explore
17 some issues that you may have raised.

18 The attorneys will be given an opportunity to ask you
19 questions as well. If there is something private that you
20 would like to explain outside the presence of the other
21 prospective jurors, please say so, and we will give you a
22 chance to do so.

23 Our goal is to complete the questioning process this
24 morning. The purpose of this questioning process is to allow
25 the Court and the parties to ensure that the jurors selected

JURY VOIR DIRE

1 will be able to serve and will be fair and impartial. Each
2 question is designed to assist the attorneys in selecting the
3 fairest jury possible. So please do not withhold information
4 in order to be seated on this jury, nor should you provide
5 inaccurate information in order to avoid service. Be
6 straightforward in your answers rather than answering in the
7 way you feel the lawyers or I expect you to answer.

8 After we complete our questioning of prospective jurors,
9 the law permits the Court and each side to excuse some jurors
10 from this case. When prospective jurors are excused in this
11 process, it is not because of any personal dislike or distrust,
12 but in order to get a final jury panel that is impartial and
13 that has the kind of balance that the parties feel is
14 appropriate for this case.

15 The procedure whereby members of the jury are chosen is
16 part of our system of justice and it has evolved with the
17 purpose of fairness to both sides.

18 You have done your full duty by your presence and your
19 readiness to serve, if called.

20 So first, I'm going to introduce the participants in this
21 case and find out whether any of you, by chance, know any of
22 the participants. So let me start with court personnel.

23 My secretary is Leni Doyle. The courtroom deputy who
24 swore you in is Vicky Ayala. The court reporter is Belle Ball.
25 My law clerks are Shao-Bai Wu, Alicia Lai, Caroline Hirst,

JURY VOIR DIRE

1 Yuqing Cui and Nathaniel Kristel.

2 My law externs, who are students, are Diana Lee, Yihan
3 Valentina Liu, Eric Ramoutar, and Audrey Vas.

4 Do any of you know me or any of the persons I've just
5 named?

6 (No response)

7 **THE COURT:** All right. Now, let me introduce the
8 lawyers and their clients. The plaintiffs are represented by
9 Nicholas Porritt, Adam Apton, Elizabeth Tripodi, Adam McCall,
10 Alexander Krot, Kathy Ames Valdivieso, Max Weiss, Joseph Levi,
11 and Eduard Korsinsky; and their support staff, Stephanie
12 Quinonez, Derek Palisoul, and Craig Veconi.

13 Do any of you know any of these individuals on a social or
14 professional basis?

15 (No response)

16 **THE COURT:** All right. Thank you.

17 Counsel, please introduce your client -- clients.

18 **MR. PORRITT:** Thank you, Your Honor. Nicholas Porritt
19 on behalf of the plaintiff. And Mr. Glen Littleton is here
20 (Indicating).

21 **THE COURT:** All right. Do any of you know
22 Mr. Littleton?

23 (No response)

24 **THE COURT:** All right. Thank you.

25 The defendants are represented by Alex Spiro, Alex

JURY VOIR DIRE

1 Bergjans, Andrew Rossman, Anthony Alden, Doug Post, Ellyde
2 Thompson, Jesse Bernstein, Kyle Batter, Michael Lifrak, Phillip
3 Jobe, Stephanie Keleman, and William Price; and their support
4 staff, Gabby Trevino, Kayla Fleming, Mario Gutierrez, and Ken
5 Kotarski.

6 Do any of you know these individuals on a social or
7 professional basis?

8 (No response)

9 **THE COURT:** All right. Counsel, if you could
10 introduce your client or clients and representative -- client
11 representatives.

12 **MR. SPIRO:** To make room for the jury, the client
13 representatives have stepped out, just so everybody could have
14 a seat. So they're not here, presently.

15 **THE COURT:** All right. Why don't I name the clients
16 and let's see if anybody knows them.

17 Elon Musk, Brad Buss, Robyn Denholm, Ira Ehrenpreis,
18 Antonio Gracias, James Murdoch, Kimbal Musk, Linda Johnson
19 Rice.

20 Do any of you know any of these individuals on a personal
21 or a professional basis?

22 (No response)

23 **THE COURT:** All right. Next thing I want to do is go
24 through a list of potential witnesses in this case to see if
25 you -- any of you know any of these potential witnesses. So

JURY VOIR DIRE

1 I'm going to read the names and then see if any -- if you
2 recognize somebody, just raise your hand. All right?

3 Deepak Ahuja, Dave Arnold, Ryan Brinkman, Brad Buss, Aaron
4 Chew, Dan Dees, Robyn Denholm, Egon Durban, Joseph Fath,
5 Timothy Fries, Antonio Gracias, Michael Hartzmark, Steven
6 Heston, Nii Owuraku Koney, Glen Littleton, Joshua Mitts, Elon
7 Musk, Kimbal Musk, Rick Polhemus, Guhan Subramanian, Martin or
8 Martín Viecha, Sam Teller, Ira Ehrenpreis, James Murdoch, Linda
9 Johnson Rice, Larry Ellison, J. B. Straubel -- Straubel, Daniel
10 Fischel, Amit Seru, Yasir Al-Rumayyan, Saad Al Jarboa, Naif
11 Al Mogren, and Turqi Alnowaiser -- Alnowaiser.

12 (No response)

13 **THE COURT:** All right. Let me give you a brief
14 description of this case, and then I'm going to ask whether you
15 have any direct knowledge about this case.

16 The lead plaintiff and class representative in this case
17 is Glen Littleton. Mr. Littleton represents a class of all
18 individuals and entities who purchased or sold Tesla stock
19 options or other securities from 12:48 p.m. Eastern daylight
20 time on August 7, 2018, to August 17, 2018. That period is
21 known as the class period.

22 The defendants in this case are Tesla, Inc., Elon Musk,
23 and Tesla's board of directors from the time of the class
24 period.

25 Tesla designs, develops, manufactures and sells electric

JURY VOIR DIRE

1 vehicles and energy generation and storage systems.

2 Elon Musk was Tesla's chief executive officer and chairman
3 of the board of directors during the class period. Plaintiff
4 intends to prove at trial that Elon Musk and Tesla violated the
5 securities laws. Specifically, on August 7, 2018, at
6 12:48 p.m. Eastern daylight time, Elon Musk tweeted, quote, "Am
7 considering taking Tesla private at \$420. Funding secured."

8 Elon Musk later tweeted, quote, "Investor support is
9 confirmed. Only reason why this is not certain is that it's
10 contingent on shareholder vote."

11 Plaintiff alleges that these tweets were materially false
12 and artificially affected the price of Tesla's stock and other
13 securities after they were made. Defendants contend that
14 plaintiff has not and cannot prove that any of Elon Musk's
15 statements were materially false, and that these statements did
16 not result in any artificial price inflation, particularly in
17 light of the unchallenged statement that Mr. Musk was
18 considering taking Tesla private at \$420 per share.

19 On August 13, 2018, Elon Musk published a blog post
20 regarding the potential going-private transaction. Defendants
21 contend that the blog post disclosed further information about
22 the potential transaction, and is further evidence that
23 Mr. Musk did not make any materially false statements in
24 violation of the securities laws.

25 Following the tweets on August 7, 2018, there was media

JURY VOIR DIRE

1 and investor interest in the proposed going-private
2 transaction. After reaching a high of \$386.48 on August 7th,
3 2018, Tesla's stock declined to \$335.45 by close on August 16,
4 2018. Plaintiff intends to prove that defendants' allegedly
5 false and/or materially misleading statements damaged the
6 plaintiff and the plaintiff classes, and losses were realized
7 by the class during the class period.

8 Plaintiff further intends to prove that member of the
9 Tesla -- of Tesla's board are liable as control persons for
10 securities laws violations by Tesla.

11 Defendants deny that Elon Musk or Tesla made any
12 materially false or misleading statements, deny that they did
13 anything wrong, and intend to prove at trial that plaintiff's
14 claims have no merit.

15 Among other things, defendants intend to prove that
16 plaintiff and the class cannot prove the material falsity of
17 the Challenged Statements or reliance thereon, cannot prove the
18 challenged transactions were material, cannot prove that
19 Mr. Musk acted with the requisite scienter with respect to
20 materially false statements, cannot show damages or loss
21 causation, and cannot show that there's a controlling -- that
22 there is controlling personal liability for Tesla's board
23 members.

24 Now, other than what I've just stated, do any of you have
25 any direct knowledge of this case other than reading or hearing

JURY VOIR DIRE

1 about it through the media?

2 (No response)

3 **THE COURT:** All right. Let me ask, for those of
4 you -- let me just, a show of hands, how many of you have heard
5 about this particular case?

6 (Show of hands)

7 **THE COURT:** All right. I will ask you later, but let
8 me ask if there's anybody here who have raised your hand,
9 believe that would you not be able to follow my instructions
10 that will tell you that you are to disregard what you've heard
11 and base your verdict solely on the evidence that is presented
12 in the courtroom.

13 Is there anybody who feels that they can't follow those
14 instructions, based on your understanding of what you've heard
15 through the media?

16 (No response)

17 **THE COURT:** All right. We'll ask some questions later
18 and the attorneys will have a chance to ask you some more
19 questions, but I just wanted to get a show of hands. Thank you
20 for doing that.

21 Now, I'm going to ask some questions, and at some point
22 the attorneys will be able to ask some questions. But I first
23 want to talk to those people who have indicated that they may
24 have difficulty serving during these three weeks. Most of you
25 say you can serve, but there are a number of you who indicated

JURY VOIR DIRE

1 there may be some problems. And I kind of want to explore that
2 with you.

3 So let me first ask that you listen to my questions
4 carefully, tell me anything that each question comes to mind.
5 It is your duty to answer truthfully and completely. None of
6 these questions are intended to embarrass you or invade your
7 privacy, so if you feel your answer to a particular question
8 might embarrass you, please let me know and I will give you an
9 opportunity to answer privately outside the hearing of the
10 other members of the jury panel.

11 Now, as I mentioned, a typical day will begin at 8:30 and
12 end at 2:00 with 20-minute breaks every 90 minutes and that
13 this case is expected to last approximately three weeks.
14 Possibly a bit longer, depending on jury deliberations.

15 So let me, based on the questionnaires, follow up with
16 some questions that I have. So let me just start with Juror
17 No. 8, be right -- hi. We have a microphone that we're going
18 to try to pass around.

19 **PROSPECTIVE JUROR LIU:** Yes.

20 **THE COURT:** Hi, good morning, Ms. Liu.

21 **PROSPECTIVE JUROR LIU:** Good morning.

22 **THE COURT:** I'm sorry about your mother's passing and
23 I understand the difficulty, and I think you indicated that you
24 would like to go back and help your dad --

25 **PROSPECTIVE JUROR LIU:** Uh-huh.

JURY VOIR DIRE

1 **THE COURT:** -- who has some health issues.

2 **PROSPECTIVE JUROR LIU:** Uh-huh.

3 **THE COURT:** Do you -- can you tell us more about the
4 timing of when you're planning -- you were going to apply for a
5 visa and what's happening at this point?

6 **PROSPECTIVE JUROR LIU:** I have my visa already. I
7 already bought ticket on January 24th.

8 **THE COURT:** So you already have a flight planned on
9 the 24th.

10 **PROSPECTIVE JUROR LIU:** Yeah. Before the summons I
11 received.

12 **THE COURT:** I see. I understand why you want to get
13 back to see your dad. I was curious, is are your -- is your
14 flight a ticket that can be changed without penalty?

15 **PROSPECTIVE JUROR LIU:** Um, if I can, so -- because my
16 dad is -- has lung and the brain cancer, so he's hospitalized.
17 I don't know. It's called a small -- small molecule lung
18 cancer is fast-developed.

19 **THE COURT:** Small-cell lung cancer?

20 **PROSPECTIVE JUROR LIU:** Yeah, small-cell, yeah.

21 **THE COURT:** So he's in the hospital now?

22 **PROSPECTIVE JUROR LIU:** He is in the hospital and he
23 got affected by the -- infected by the COVID-19. So, you know,
24 currently in Beijing, many, many people got infected by the --

25 **THE COURT:** I see.

JURY VOIR DIRE

1 **PROSPECTIVE JUROR LIU:** Yes.

2 **THE COURT:** So he's currently --

3 **PROSPECTIVE JUROR LIU:** Hospitalized.

4 **THE COURT:** -- ill with COVID-19 as well?

5 **PROSPECTIVE JUROR LIU:** COVID-19 as well, too, yeah.

6 **THE COURT:** Okay.

7 All right. Any questions, follow-up questions from
8 counsel of this particular --

9 **MR. SPIRO:** No, Your Honor.

10 **MR. APTON:** No, Your Honor.

11 **THE COURT:** All right. Thank you, Ms. Liu. I
12 appreciate that.

13 **PROSPECTIVE JUROR LIU:** Thanks.

14 **THE COURT:** Okay. Juror No. 13? Juror No. 13. Oh,
15 we need a microphone there. We are going to get that to you.

16 All right. Thank you, Ms. Jahan, is it?

17 Your -- tell us about what your current work is. I know
18 you have concern about the financial circumstances. Maybe you
19 can tell me a little bit more about your situation.

20 **PROSPECTIVE JUROR JAHAN:** Yeah. I'm working --

21 **THE COURT:** Put the microphone --

22 **PROSPECTIVE JUROR JAHAN:** Oh.

23 **THE COURT:** Yeah.

24 **PROSPECTIVE JUROR JAHAN:** I'm working for the
25 community, like, nonprofit organization.

JURY VOIR DIRE

1 **THE COURT:** Uh-huh.

2 **PROSPECTIVE JUROR JAHAN:** And working for the
3 individuals with the development disabilities. And I'm not
4 paid that much. So, only two of us are just living in a house
5 and I have a lot to pay. And I'm just, like, um, can't pay all
6 the bills and stuff like that.

7 **THE COURT:** And so if you're not at work, do you get
8 any kind of jury pay?

9 **PROSPECTIVE JUROR JAHAN:** No. I won't be paid.

10 **THE COURT:** So you would lose your salary?

11 **PROSPECTIVE JUROR JAHAN:** Yeah.

12 **THE COURT:** All right. Thank you.
13 Any follow-up questions?

14 **MR. SPIRO:** No, Your Honor.

15 **MR. APTON:** No, Your Honor.

16 **THE COURT:** All right. Thank you, Ms. Jahan. I
17 appreciate that.

18 **PROSPECTIVE JUROR JAHAN:** Thank you.

19 **THE COURT:** Okay, Juror No. 44.

20 **PROSPECTIVE JUROR NUKU:** Hi, Your Honor.

21 **THE COURT:** Hi. Good morning. Ms. Nuku; is that
22 right?

23 **PROSPECTIVE JUROR NUKU:** Yes.

24 **THE COURT:** Hi. You have an infant son?

25 **PROSPECTIVE JUROR NUKU:** Yes.

JURY VOIR DIRE

1 **THE COURT:** And I understand his -- that you're
2 breastfeeding and providing --

3 **PROSPECTIVE JUROR NUKU:** Yes.

4 **THE COURT:** Now, we've had a number of jurors who were
5 exactly in the same situation as you are. What we've done, and
6 I want to ask you if that works for you if you are called to
7 serve, we take breaks every 90 minutes, so maybe -- and the
8 breaks sometimes are a little bit longer. If you have to pump,
9 we have a private room that's closed, and that's what people
10 have used. If you need refrigeration, I think we have a
11 refrigerator.

12 If we offer those services, would you be able to serve?

13 **PROSPECTIVE JUROR NUKU:** The thing is, he doesn't
14 feed -- feed the bottle.

15 **THE COURT:** Oh.

16 **PROSPECTIVE JUROR NUKU:** So I have to directly give
17 him.

18 **THE COURT:** I see.

19 **PROSPECTIVE JUROR NUKU:** Yeah.

20 **THE COURT:** So it's not just the milk, but he needs
21 you?

22 **PROSPECTIVE JUROR NUKU:** Yes.

23 **THE COURT:** All right, so you are -- are you
24 currently -- I'm just curious, are you working remotely or how
25 do you --

JURY VOIR DIRE

1 **PROSPECTIVE JUROR NUKU:** I'm working from home.

2 **THE COURT:** I see. And how many months is your son
3 now?

4 **PROSPECTIVE JUROR NUKU:** He's actually one year and --
5 one year old and one month.

6 **THE COURT:** Okay. And he -- but he still needs you?

7 **PROSPECTIVE JUROR NUKU:** Yeah. But he -- he eats
8 solid food, but he always asks for milk from me.

9 **THE COURT:** Okay.

10 **PROSPECTIVE JUROR NUKU:** Yeah.

11 **THE COURT:** All right. Any questions, Counsel?

12 **MR. SPIRO:** No, Your Honor.

13 **MR. APTON:** Your Honor, just one.
14 Good morning, Ms. Nuku.

15 **PROSPECTIVE JUROR NUKU:** Good morning.

16 **MR. APTON:** How old is your son? You said one year?

17 **PROSPECTIVE JUROR NUKU:** Yes, one year old.

18 **MR. APTON:** And does he still take naps?

19 **PROSPECTIVE JUROR NUKU:** Yes, he does.

20 **MR. APTON:** And do you put him down for naps?

21 **PROSPECTIVE JUROR NUKU:** Yes.

22 **MR. APTON:** How many naps a day?

23 **PROSPECTIVE JUROR NUKU:** Three times a day.

24 **MR. APTON:** Three times?

25 **PROSPECTIVE JUROR NUKU:** Like the morning, in between

JURY VOIR DIRE

1 breakfast and lunch, after lunch, and like before 5:00. Yeah.

2 **MR. APTON:** Understood. Thank you. Thank you.

3 **PROSPECTIVE JUROR NUKU:** Uh-huh.

4 **THE COURT:** All right. Thank you, Ms. Nuku.

5 Appreciate it.

6 Juror No. 45, Mr. Buckley?

7 **PROSPECTIVE JUROR BUCKLEY:** Good morning, Your Honor.

8 **THE COURT:** Hi, good morning. You're an equipment
9 operator?

10 **PROSPECTIVE JUROR BUCKLEY:** That's true.

11 **THE COURT:** And so you do heavy construction?

12 **PROSPECTIVE JUROR BUCKLEY:** Yes.

13 **THE COURT:** And does your -- who is your employer?

14 It's --

15 **PROSPECTIVE JUROR BUCKLEY:** Pacific Engineering,
16 they're here in the city.

17 **THE COURT:** Okay. Do they provide any pay for jury
18 service?

19 **PROSPECTIVE JUROR BUCKLEY:** Not that I'm aware of.

20 **THE COURT:** Have you ever served on a jury before?

21 **PROSPECTIVE JUROR BUCKLEY:** No, I have not.

22 **THE COURT:** So you haven't put them to the test of
23 whether they pay at this point?

24 **PROSPECTIVE JUROR BUCKLEY:** We're a very small
25 company, Your Honor.

JURY VOIR DIRE

1 **THE COURT:** I see. How many employees are there?

2 **PROSPECTIVE JUROR BUCKLEY:** It varies, but full-time,
3 maybe seven.

4 **THE COURT:** Oh. And how many folks are -- is
5 everybody doing equipment operation or --

6 **PROSPECTIVE JUROR BUCKLEY:** No, I'm the only union
7 equipment operator in the firm.

8 **THE COURT:** Hm. And are you currently on a job?

9 **PROSPECTIVE JUROR BUCKLEY:** I am not.

10 **THE COURT:** Okay. Do you anticipate any jobs coming
11 up?

12 **PROSPECTIVE JUROR BUCKLEY:** Yes.

13 **THE COURT:** In the next three weeks?

14 **PROSPECTIVE JUROR BUCKLEY:** Well, I don't know, with
15 the rain. We do state work, CalTrans and private work.

16 **THE COURT:** Okay. All right. So as far as you know,
17 there's -- would you just simply lose salary? There's no -- no
18 compensation, then?

19 **PROSPECTIVE JUROR BUCKLEY:** Exactly.

20 **THE COURT:** All right. And do you get paid sort of
21 whether you are on the job or not? Or do you get paid when you
22 are on the job?

23 **PROSPECTIVE JUROR BUCKLEY:** No, it's basically hourly.

24 **THE COURT:** Hourly?

25 **PROSPECTIVE JUROR BUCKLEY:** Yes.

JURY VOIR DIRE

1 **THE COURT:** So if you're not on a construction
2 project, do they pay you?

3 **PROSPECTIVE JUROR BUCKLEY:** No. No.

4 **THE COURT:** So it's only when you're --

5 **PROSPECTIVE JUROR BUCKLEY:** Correct.

6 **THE COURT:** All right. And so I know jobs come and
7 go, and hopefully they come for your purpose.

8 **PROSPECTIVE JUROR BUCKLEY:** I can find work,
9 Your Honor. I've got a lot of talent.

10 **THE COURT:** Okay. So, but the bottom line is, within
11 these next three weeks, you think there would be some jobs that
12 you would miss if you were here?

13 **PROSPECTIVE JUROR BUCKLEY:** I'm not really -- I'd
14 rather serve, Your Honor, than work.

15 **THE COURT:** So you --

16 **PROSPECTIVE JUROR BUCKLEY:** I'd rather serve on the
17 jury.

18 **THE COURT:** So you would be able to afford to serve?

19 **PROSPECTIVE JUROR BUCKLEY:** Yes.

20 **THE COURT:** Okay. Well, that's the critical question
21 because it's -- yeah. Yeah. So you can make it financially?

22 **PROSPECTIVE JUROR BUCKLEY:** Yes, Your Honor.

23 **THE COURT:** All right. Appreciate that.

24 Any questions, follow-up questions?

25 **MR. SPIRO:** No, Your Honor.

JURY VOIR DIRE

1 **MR. APTON:** No, Your Honor.

2 **THE COURT:** All right. Thank you. Appreciate that.

3 Okay, Juror No. 48?

4 **PROSPECTIVE JUROR DE LA CRUZ:** Hi, Your Honor. Good
5 morning.

6 **THE COURT:** Hi, good morning. I think you have some
7 hesitancy, sounds like, some medical issues?

8 **PROSPECTIVE JUROR DE LA CRUZ:** Yes, Your Honor. I was
9 diagnosed with anxiety and ADHD and I take medication daily.
10 I'm still consistently going to therapy monthly, just to make
11 sure that I'm steady and I'm doing well, but sometimes I do get
12 anxiety attacks often -- or not often, but occasionally, under
13 stress and when I'm overwhelmed.

14 **THE COURT:** Uh-huh. Would serving as a juror in this
15 case, you think, might trigger -- would that cause you anxiety?

16 **PROSPECTIVE JUROR DE LA CRUZ:** Yes. Yes, Your Honor.

17 **THE COURT:** So you think there's a good chance that
18 you'd end up having an episode if you were to serve?

19 **PROSPECTIVE JUROR DE LA CRUZ:** Yes.

20 **THE COURT:** And you're currently working for the
21 Unified School District?

22 **PROSPECTIVE JUROR DE LA CRUZ:** Yes, sir. I actually
23 have two jobs as well.

24 **THE COURT:** What is your other job?

25 **PROSPECTIVE JUROR DE LA CRUZ:** Martial arts

JURY VOIR DIRE

1 instructor, actually.

2 **THE COURT:** Oh. All right. But you are able to
3 negotiate those jobs and do those jobs?

4 **PROSPECTIVE JUROR DE LA CRUZ:** Yes. I have learned to
5 try and take deep breaths and take breaks when I feel stressed
6 out or overwhelmed.

7 **THE COURT:** Okay. And does the medication prevent you
8 from -- does it cloud your mind at all or can you -- you can
9 still work with medication?

10 **PROSPECTIVE JUROR DE LA CRUZ:** Yes, sir.

11 **THE COURT:** Okay. So the main concern is that serving
12 might put stress on you; it's different from your work
13 stress --

14 **PROSPECTIVE JUROR DE LA CRUZ:** Yes, very -- very
15 different, yes. And this is my first time being in a jury.

16 **THE COURT:** Okay. So you've never served before?

17 **PROSPECTIVE JUROR DE LA CRUZ:** No, sir.

18 **THE COURT:** Okay. Any questions, follow-up questions?

19 **MR. APTON:** No, Your Honor.

20 **MR. SPIRO:** No, Your Honor.

21 **THE COURT:** All right. Thank you, Ms. De La Cruz,
22 appreciate it.

23 **PROSPECTIVE JUROR DE LA CRUZ:** Thank you.

24 **THE COURT:** Juror No. 58. Mr. Xi.

25 **PROSPECTIVE JUROR XI:** Good morning, Your Honor.

JURY VOIR DIRE

1 **THE COURT:** Hi, good morning, Mr. Xi. So you're
2 taking care of a parent --

3 **PROSPECTIVE JUROR XI:** Correct.

4 **THE COURT:** -- sounds like.

5 And you've got to take her -- this is your mom, I take it,
6 or --

7 **PROSPECTIVE JUROR XI:** That's correct.

8 **THE COURT:** And you take her to doctor appointments?

9 **PROSPECTIVE JUROR XI:** Yes. I'm actually her
10 designated driver, so...

11 **THE COURT:** Okay. And how often do you need to drive
12 her?

13 **PROSPECTIVE JUROR XI:** So usually it's -- every month
14 type of thing, I usually basically drive her to her doctors'
15 appointment for follow up. And basically also helping her
16 refill medications.

17 **THE COURT:** And if you were to serve during the next
18 three weeks, is there a way that someone can help her or
19 someone else can help her with -- does she have any doctor
20 appointments in the next three weeks?

21 **PROSPECTIVE JUROR XI:** I have to check my schedule,
22 so...

23 **THE COURT:** Okay. Is -- do you have other relatives,
24 either siblings or anybody else that can help take her if she
25 needs to go?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR XI:** I -- well, actually, I have a
2 sister but she's pretty much a full-time mom, so she has her,
3 you know, family to take care of, so I'm usually -- I'm single
4 so I'm actually the one who will be taking care of her instead.

5 **THE COURT:** So it's always you who takes her?

6 **PROSPECTIVE JUROR XI:** Correct.

7 **THE COURT:** And is there anybody else in your family?

8 **PROSPECTIVE JUROR XI:** I have a dad but he doesn't
9 drive so...

10 **THE COURT:** Okay. Any other relatives or friends?

11 **PROSPECTIVE JUROR XI:** No.

12 **THE COURT:** The answer is no?

13 **PROSPECTIVE JUROR XI:** No.

14 **THE COURT:** Tell me just roughly how often you have to
15 take her to doctors' appointments. Is it once every several
16 months or once a month or --

17 **PROSPECTIVE JUROR XI:** Usually once a month type of
18 thing.

19 **THE COURT:** But you don't know whether she's got
20 something planned in the next three weeks?

21 **PROSPECTIVE JUROR XI:** Supposedly there's going to be
22 something within tomorrow, I have to actually take her but,
23 unfortunately, I -- I told -- pretty much have her schedule her
24 doctor to see whether or not she is actually able to do like a
25 teleconference rather than stipulate for, like, an in-office

JURY VOIR DIRE

1 type of visit, which she's actually supposed to be there.

2 **THE COURT:** Oh. So all the visits, though, have been
3 live and not teleconference?

4 **PROSPECTIVE JUROR XI:** It's usually live. Once in a
5 while it's teleconference, depending on how she's feeling.

6 **THE COURT:** Okay. And I don't want to pry too much,
7 and you can tell me to stop, but she has a medical condition
8 that requires often -- often visits?

9 **PROSPECTIVE JUROR XI:** Correct.

10 **THE COURT:** And the preference for the doctor is for a
11 visual, a live visit?

12 **PROSPECTIVE JUROR XI:** Correct.

13 **THE COURT:** Okay. And there's nobody else in your
14 family or friends that could take her during the next couple of
15 weeks?

16 **PROSPECTIVE JUROR XI:** No. It would just be me.
17 Because a lot of time the doctor prefer me, just to have me be
18 there with her while during the doctor visits because in case
19 if there's anything, I can actually make the decision for her.

20 **THE COURT:** I see. So you help make her decisions?

21 **PROSPECTIVE JUROR XI:** Correct.

22 **THE COURT:** Medical decisions?

23 **PROSPECTIVE JUROR XI:** Correct.

24 **THE COURT:** All right. And you're working -- are you
25 working full-time at the city and county?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR XI:** Correct, sir.

2 **THE COURT:** And are you doing that remote or in person
3 or what's your --

4 **PROSPECTIVE JUROR XI:** I'm actually in person. I
5 can't do remote.

6 **THE COURT:** So you take time off, then, to take
7 your --

8 **PROSPECTIVE JUROR XI:** Yes. I'm actually on FMLA so a
9 lot of times I have to actually use that.

10 **THE COURT:** Okay. And the last question I have is, is
11 it possible to schedule her appointments in the afternoon so
12 that you could serve up until 2:00? Or is that not possible?

13 **PROSPECTIVE JUROR XI:** It depends, because a lot of
14 time it's really not up to me, it's up to the doctor, whether
15 or not there's, like, doctors' appointment slots that's
16 available for her.

17 **THE COURT:** Okay. All right. Any follow-up
18 questions?

19 **MR. SPIRO:** No, Your Honor.

20 **MR. APTON:** No, Your Honor.

21 **THE COURT:** All right. Thank you, Mr. Xi. Appreciate
22 it.

23 Juror No. 60.

24 **PROSPECTIVE JUROR GEOGHEGAN:** Hello.

25 **THE COURT:** Hi. Ms. Geoghegan.

JURY VOIR DIRE

1 **PROSPECTIVE JUROR GEOGHEGAN:** Geoghegan.

2 **THE COURT:** Geoghegan.

3 **PROSPECTIVE JUROR GEOGHEGAN:** Uh-huh.

4 **THE COURT:** Hi, good morning.

5 **PROSPECTIVE JUROR GEOGHEGAN:** Good morning.

6 **THE COURT:** Well, you've heard the conversation.

7 You're also a breastfeeding mom.

8 **PROSPECTIVE JUROR GEOGHEGAN:** I actually was having a
9 really hard time pumping and so I stopped breastfeeding
10 recently.

11 **THE COURT:** Oh.

12 **PROSPECTIVE JUROR GEOGHEGAN:** Like -- so I'm not
13 pumping anymore. But I do have childcare issues, which I
14 thought for some reason that the Court didn't meet on Fridays,
15 so I -- I have consistent caregiver availability on Tuesday,
16 Wednesday, Thursday. And I tried finding some Mondays, because
17 I thought you guys were closed on Friday. I don't know where I
18 read that, or obviously I made it up. But I would have to
19 coordinate some sort of care for her on Fridays and I can't
20 find anyone for next Monday, the 23rd.

21 **THE COURT:** Okay. So, the people you normally rely on
22 are not available on Fridays?

23 **PROSPECTIVE JUROR GEOGHEGAN:** Exactly, yeah. And they
24 sometimes do Mondays but no one's available on this coming
25 Monday.

JURY VOIR DIRE

1 **THE COURT:** Okay. What are the chances of finding any
2 other backup source?

3 **PROSPECTIVE JUROR GEOGHEGAN:** For the Fridays, it's
4 possible, I just haven't tried coordinating, but there's no --
5 I mean, I reached out to the four people that watch her and no
6 one can on next Monday. But the Fridays, if you give me time
7 to coordinate, I might be able to coordinate Fridays.

8 **THE COURT:** Okay.

9 **PROSPECTIVE JUROR GEOGHEGAN:** But not the 23rd.

10 **THE COURT:** So the 23rd, you've exhausted all --

11 **PROSPECTIVE JUROR GEOGHEGAN:** I've exhausted all
12 resources on the 23rd, unfortunately.

13 **THE COURT:** Okay.

14 **PROSPECTIVE JUROR GEOGHEGAN:** Sorry. They're
15 available the 30th if you change the day we're not meeting on
16 Monday.

17 **THE COURT:** I wish I could do that. I wish I could do
18 that. But there are limits to even what a judge can do,
19 unfortunately.

20 Okay. Any follow-up questions?

21 **MR. SPIRO:** No, Your Honor.

22 **MR. APTON:** Just one question. The availability or
23 the unavailability for next Monday, that's in light of us
24 ending at 2:00 or maybe even a little bit earlier?

25 **PROSPECTIVE JUROR GEOGHEGAN:** It's -- yeah, because

JURY VOIR DIRE

1 somebody needs to watch her -- I can bring her. She doesn't
2 move really yet, so she could just sit on my lap. But, no, I
3 don't -- my husband works. It's my two -- it's my mother, my
4 mother-in-law or my friend Kelly are the people who watch her
5 and none of them are available on Monday.

6 **MR. APTON:** Understood. Thank you.

7 **PROSPECTIVE JUROR GEOGHEGAN:** Yeah.

8 **THE COURT:** Well, that would be a first. I haven't
9 tried that one yet.

10 **PROSPECTIVE JUROR GEOGHEGAN:** Yeah. She's really
11 cute.

12 **THE COURT:** Might be interesting. Okay. Thank you.
13 Juror No. 68.

14 **PROSPECTIVE JUROR DAING:** Good morning.

15 **THE COURT:** Hi, good morning. Mister -- is it Daing
16 or --

17 **PROSPECTIVE JUROR DAING:** Daing.

18 **THE COURT:** Daing, okay. So you own a gas station?

19 **PROSPECTIVE JUROR DAING:** I do.

20 **THE COURT:** So it's important for you to be there, it
21 sound like?

22 **PROSPECTIVE JUROR DAING:** I have some employees but
23 issues can crop up any moment, so I have to be available.

24 **THE COURT:** Okay. So you do have employees who could
25 physically be there but you want to be available in case stuff

JURY VOIR DIRE

1 comes up?

2 **PROSPECTIVE JUROR DAING:** Correct.

3 **THE COURT:** If you are available every 90 minutes by
4 phone or Facetime or something like that, would that work?

5 **PROSPECTIVE JUROR DAING:** Possibly, unless it's an
6 urgent issue that needs resolution right away.

7 **THE COURT:** Okay. I'm sort of curious. I don't know
8 the business that well other than going to gas stations, but
9 what -- what kind of -- obviously, if there's a crime or
10 something like that, or a windstorm that blows over your -- we
11 saw what happened the other day. Are there things that often
12 come up that need urgent --

13 **PROSPECTIVE JUROR DAING:** Unpredictably, they can.
14 For example, the pumps can go down, you know, the car wash
15 break down, there could be some customer issues. Cars can get
16 stuck or some resolution that these employees don't know much
17 about.

18 **THE COURT:** Okay. And your station, is it in Danville
19 or out --

20 **PROSPECTIVE JUROR DAING:** Lafayette.

21 **THE COURT:** In Lafayette? Okay. So it could work but
22 there's an issue of emergencies where you would have to
23 respond?

24 **PROSPECTIVE JUROR DAING:** That's exactly right.

25 **THE COURT:** Okay. And is there anybody else that's

JURY VOIR DIRE

1 helping you manage the gas station, so like if you are not
2 there, they could make decisions for you?

3 **PROSPECTIVE JUROR DAING:** Not really, but my wife is
4 there but she's not well-versed in every aspect of it.

5 **THE COURT:** Okay. Has she been working there a long
6 time?

7 **PROSPECTIVE JUROR DAING:** She hasn't worked there.
8 She occasionally goes there, but she doesn't regularly go
9 there.

10 **THE COURT:** She is not a regular there.

11 **PROSPECTIVE JUROR DAING:** No.

12 **THE COURT:** All right. Thank you.

13 Any follow-up questions?

14 **MR. SPIRO:** No, Your Honor.

15 **MR. APTON:** Yes, just -- Mr. Daing, one quick
16 question. What sort of issues or emergencies crop up that
17 require you to physically be present to fix them?

18 **PROSPECTIVE JUROR DAING:** Yeah. As I said, the pumps
19 can go down, especially given the rains. And the inflow of the
20 water from the soil can stop everything in its tracks. Car
21 wash operations, if it's not raining, thankfully, now, the cars
22 can get stuck. The machine can stop in its tracks
23 unpredictably and some resolution would need to be enforced.

24 **MR. APTON:** So with further bad weather on the
25 horizon, that's potentially an issue that's more pertinent --

JURY VOIR DIRE

1 **PROSPECTIVE JUROR DAING:** It's possible. It's
2 unpredictable.

3 **MR. APTON:** Understand. Thank you.

4 **THE COURT:** Let me just, before I let you go, is --
5 are there -- are the folk that are working for you, can they
6 deal with the car stuck in the car wash or --

7 **PROSPECTIVE JUROR DAING:** They can but the first thing
8 they do is resort to calling me and looking for directions.

9 **THE COURT:** I see.

10 **PROSPECTIVE JUROR DAING:** I may not get a call or I
11 might get six in a row and there is no knowing.

12 **THE COURT:** Yeah, I see. And they need your
13 direction?

14 **PROSPECTIVE JUROR DAING:** They absolutely do.

15 **THE COURT:** You don't have, like, an assistant manager
16 who can say hey --

17 **PROSPECTIVE JUROR DAING:** No, it's them and then they
18 escalate it to me right away.

19 **THE COURT:** Okay. All right. Thank you, Mr. Daing.
20 Juror No. 74.

21 **PROSPECTIVE JUROR BRANSFIELD:** Your Honor, I've
22 resolved everything so I'm available.

23 **THE COURT:** Oh, you are available?

24 **PROSPECTIVE JUROR BRANSFIELD:** Yes.

25 **THE COURT:** Oh, good. Great. Thank you.

JURY VOIR DIRE

1 (Reporter clarification)

2 **THE COURT:** All right. And that's Ms. Bransfield,
3 right?

4 **PROSPECTIVE JUROR BRANSFIELD:** Yes.

5 **THE COURT:** Great. Thank you. Appreciate that.
6 Juror No. 81.

7 **PROSPECTIVE JUROR AMUR:** Good morning, Your Honor.

8 **THE COURT:** Hi, good morning, Mr. Amur?

9 **PROSPECTIVE JUROR AMUR:** Yes.

10 **THE COURT:** So you are an engineer.

11 **PROSPECTIVE JUROR AMUR:** Yes.

12 **THE COURT:** And who do you work for?

13 **PROSPECTIVE JUROR AMUR:** Analog Devices.

14 **THE COURT:** Okay. How big of a company is that?

15 **PROSPECTIVE JUROR AMUR:** Um, 20,000 employees or so.

16 **THE COURT:** Oh, okay. And your concern is you've got
17 some time-sensitive projects?

18 **PROSPECTIVE JUROR AMUR:** That's correct.

19 **THE COURT:** And can you tell us a little bit more
20 about what the time sensitivity is?

21 **PROSPECTIVE JUROR AMUR:** Well, deadlines, and taking a
22 lot of time off will probably affect that.

23 **THE COURT:** Do you have some close deadlines that are
24 imminent or what's --

25 **PROSPECTIVE JUROR AMUR:** Yeah, yeah.

JURY VOIR DIRE

1 **THE COURT:** What's an example of -- do you have one
2 coming up within the next month or something?

3 **PROSPECTIVE JUROR AMUR:** There's some, like, customer
4 issues that there are -- to be resolved, like, really soon,
5 within weeks or as soon as possible.

6 **THE COURT:** And what is it that you -- you provide
7 software? Or --

8 **PROSPECTIVE JUROR AMUR:** Yes, that's correct.

9 **THE COURT:** What kind of software is that?

10 **PROSPECTIVE JUROR AMUR:** It's embedded software.

11 **THE COURT:** Is that for enterprise users or business?
12 What kind of --

13 **PROSPECTIVE JUROR AMUR:** No, so as of potential
14 issues, one of -- some of the customers of -- some of our
15 customers are electric vehicle manufacturers. So they think
16 if, like, outcome of this case could negatively affect our
17 business, which could affect my employment and such.

18 **THE COURT:** I'm sorry, what could affect their
19 business?

20 **PROSPECTIVE JUROR AMUR:** So, the customers of our --
21 some of the customers are electric vehicle manufacturers. So
22 some negative -- some outcome of this -- of this case could
23 affect the business of my employer.

24 **THE COURT:** Oh. Okay. So it's not -- now you are
25 talking about not the time problem, but --

JURY VOIR DIRE

1 **PROSPECTIVE JUROR AMUR:** The schedule, yes.

2 **THE COURT:** -- the case itself --

3 **PROSPECTIVE JUROR AMUR:** Yes.

4 **THE COURT:** -- you think what happens in this case
5 could affect some of your customers, which then it would affect
6 your employer?

7 **PROSPECTIVE JUROR AMUR:** Correct.

8 **THE COURT:** Well, let me put that aside for a moment.

9 But let me go back to the time problem. If you were to
10 serve on this case for three weeks, what would happen to the
11 various projects? And is there anybody else that could --

12 **PROSPECTIVE JUROR AMUR:** Yeah, probably some people
13 will get reassigned and, like, my manager will have to deal
14 with that. But -- but that will -- yeah.

15 **THE COURT:** Okay. It's a fairly big company, I take
16 it?

17 **PROSPECTIVE JUROR AMUR:** But there's only, like,
18 certain group that works on my project itself, yeah.

19 **THE COURT:** Right. But if worse came to worse, your
20 manager could reassign somebody?

21 **PROSPECTIVE JUROR AMUR:** I think they will have to.

22 **THE COURT:** Okay. And I know commuting in from Walnut
23 Creek is no fun, but, of course, a lot of our staff actually
24 live out that way. It is a hassle but you would be able to do
25 it?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR AMUR:** Yeah.

2 **THE COURT:** Okay. All right. So your main concern is
3 how this might affect your customers, this case itself might
4 affect some --

5 **PROSPECTIVE JUROR AMUR:** That's -- yeah, that's an
6 issue, yes.

7 **THE COURT:** Okay. Well, we may ask you some questions
8 about that.

9 **PROSPECTIVE JUROR AMUR:** Sure.

10 **THE COURT:** Right now I'm just trying to get a sense
11 of who's available during the three weeks. So thank you.
12 Appreciate it.

13 Okay. Let's see. Juror No. 101, Ms. Xu?

14 **PROSPECTIVE JUROR XU:** Hi, Your Honor.

15 **THE COURT:** Hi, good morning, Ms. Xu.

16 **PROSPECTIVE JUROR XU:** Good morning.

17 **THE COURT:** So you also are planning to visit your
18 mother?

19 **PROSPECTIVE JUROR XU:** Correct.

20 **THE COURT:** And do you have -- do you know when?

21 **PROSPECTIVE JUROR XU:** I don't. I just started the
22 visa application because the 8th, China lifted the COVID
23 quarantine policy --

24 **THE COURT:** Right.

25 **PROSPECTIVE JUROR XU:** -- and kind of opened up the

JURY VOIR DIRE

1 visa, so I just started. But I really -- but from what I
2 heard, I can get a visa just maybe within a week, so I do --

3 **THE COURT:** Within a week?

4 **PROSPECTIVE JUROR XU:** Yeah. So I kind of apply for
5 the expedite because my mom is 92. So, with her health, she's
6 really, like, on her kind of last -- um, yeah, but I haven't
7 purchased the ticket or anything because I'm still waiting for
8 the visa.

9 **THE COURT:** All right. And is your plan, as soon as
10 you get the visa, to go immediately?

11 **PROSPECTIVE JUROR XU:** Yeah, yeah.

12 **THE COURT:** And so you would prefer not to wait for
13 three weeks?

14 **PROSPECTIVE JUROR XU:** It -- it's kind of -- so I kind
15 of had a video chat with her every day so --

16 **THE COURT:** Yeah.

17 **PROSPECTIVE JUROR XU:** -- it's kind of hard to say.
18 So, I mean, some day she is kind of okay, can talk, but some
19 other days, she can't.

20 **THE COURT:** Okay.

21 **PROSPECTIVE JUROR XU:** So I kind of wanted to be able
22 to. But again, I have to wait for the visa first. I haven't
23 gotten it yet.

24 **THE COURT:** But you have applied for an expedited
25 visa?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR XU:** Yes, I did.

2 **THE COURT:** Okay. And you said she's exposed, COVID
3 is -- does she have COVID?

4 **PROSPECTIVE JUROR XU:** She had. She had last week,
5 yeah. No, the 16th, so two weeks back, she had.

6 **THE COURT:** Okay. Is she okay now?

7 **PROSPECTIVE JUROR XU:** She is safe but she's still
8 kind of -- like she's just tired.

9 **THE COURT:** I see.

10 **PROSPECTIVE JUROR XU:** I mean, she is old. She's
11 already always tired, now.

12 **THE COURT:** Yeah, yeah.

13 **PROSPECTIVE JUROR XU:** Yeah. But she is at nursing
14 home, so she does have kind of basic medical support.

15 **THE COURT:** Okay. So she's in a nursing home, not in
16 an acute hospital, but she's in a nursing home?

17 **PROSPECTIVE JUROR XU:** Yeah, because the hospital --
18 yeah, she -- yeah, the hospital couldn't really do much because
19 of her age.

20 **THE COURT:** Okay.

21 **PROSPECTIVE JUROR XU:** So they sent her to the nursing
22 home, yeah. And earlier I couldn't visit her because of the
23 quarantine policy.

24 **THE COURT:** I see. But now you could go if --

25 **PROSPECTIVE JUROR XU:** Yeah, just changed it on the

JURY VOIR DIRE

1 January 8th.

2 **THE COURT:** Okay. All right. Thank you.

3 Any follow-up questions?

4 **MR. SPIRO:** No, Your Honor.

5 **MR. APTON:** No, Your Honor.

6 **THE COURT:** All right. Thank you.

7 Juror No. 103. All right. Ms. Young?

8 **PROSPECTIVE JUROR B. YOUNG:** Good morning, Your Honor.

9 **THE COURT:** Hi, good morning. You are an architect?

10 **PROSPECTIVE JUROR B. YOUNG:** Yes.

11 **THE COURT:** And you have -- you are working on, sounds
12 like on a huge project?

13 **PROSPECTIVE JUROR B. YOUNG:** Yep.

14 **THE COURT:** Is that local?

15 **PROSPECTIVE JUROR B. YOUNG:** It's up in Roseville.

16 **THE COURT:** Roseville?

17 **PROSPECTIVE JUROR B. YOUNG:** Uh-huh.

18 **THE COURT:** So, I know you're leading -- you're the
19 lead person on a team of 100?

20 **PROSPECTIVE JUROR B. YOUNG:** Yeah. I'm the architect
21 of record. But, actually, I also thought that we had Fridays
22 off, but if it's Thursdays off, that's when my big meeting is.

23 **THE COURT:** Oh. So that actually works for you?

24 **PROSPECTIVE JUROR B. YOUNG:** Yeah.

25 **THE COURT:** All right. So I know it is an imposition,

JURY VOIR DIRE

1 but if you were called, you could serve?

2 **PROSPECTIVE JUROR B. YOUNG:** I could, yeah. I can
3 work after 2:00 and then Thursdays I can go up there.

4 **THE COURT:** All right. Great. Okay. Thank you.

5 **PROSPECTIVE JUROR B. YOUNG:** You're welcome.

6 **THE COURT:** Let me ask. No follow-up questions, I
7 take it?

8 **MR. APTON:** No, Your Honor.

9 **MR. SPIRO:** No, Your Honor.

10 **THE COURT:** All right, thank you. Appreciate it,
11 Ms. Young.

12 **PROSPECTIVE JUROR B. YOUNG:** You are welcome.

13 **THE COURT:** Juror No. 112. Mr. Fajardo?

14 **PROSPECTIVE JUROR FAJARDO:** Yes.

15 **THE COURT:** Hi, good morning.

16 **PROSPECTIVE JUROR FAJARDO:** Good morning.

17 **THE COURT:** So you are -- well, one, you're -- you are
18 working for Sequoia Unified High School District?

19 **PROSPECTIVE JUROR FAJARDO:** Correct.

20 **THE COURT:** Do you know if they -- if they pay jury
21 pay?

22 **PROSPECTIVE JUROR FAJARDO:** Well, yeah, they do it,
23 but I have to bring some paperwork to them.

24 **THE COURT:** Okay. And so, one of the issues is you
25 take care of your grandson?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR FAJARDO:** Yeah, that's correct.

2 **THE COURT:** Is that --

3 **PROSPECTIVE JUROR FAJARDO:** That's correct.

4 **THE COURT:** Okay. So you are working full-time or
5 part-time?

6 **PROSPECTIVE JUROR FAJARDO:** Full-time.

7 **THE COURT:** So you take care of your grandson after
8 work, before work, or --

9 **PROSPECTIVE JUROR FAJARDO:** Yeah, that's correct,
10 after work.

11 **THE COURT:** After work?

12 **PROSPECTIVE JUROR FAJARDO:** Yeah.

13 **THE COURT:** So if -- and when do you get off -- what
14 time do you get off work?

15 **PROSPECTIVE JUROR FAJARDO:** 2:00.

16 **THE COURT:** So if you were here instead of the school
17 district, you could still take care of yourself grandson?

18 **PROSPECTIVE JUROR FAJARDO:** That can be possible. I
19 can take some time off maybe.

20 **THE COURT:** Okay. And how old is your grandson?

21 **PROSPECTIVE JUROR FAJARDO:** He's four.

22 **THE COURT:** Four? Okay.

23 And are there other family members around that could help?
24 Or --

25 **PROSPECTIVE JUROR FAJARDO:** Well, not in this time

JURY VOIR DIRE

1 because his father move away from Redwood City.

2 **THE COURT:** Uh-huh.

3 **PROSPECTIVE JUROR FAJARDO:** And I'm the one who's
4 taking care of him now, Tuesdays and Thursdays.

5 **THE COURT:** Oh. Well, Thursdays we're off, so you
6 could actually go to work and you -- so it's just Tuesday
7 afternoon. But if you get off at 2:00, we'll just -- when you
8 normally get off work, you could --

9 **PROSPECTIVE JUROR FAJARDO:** Yeah, that's correct.

10 **THE COURT:** That would work?

11 **PROSPECTIVE JUROR FAJARDO:** Yeah.

12 **THE COURT:** All right. Any follow-up questions?

13 **MR. SPIRO:** No, Your Honor.

14 **MR. APTON:** No, Your Honor.

15 **THE COURT:** Great. Okay. Thank you, Mr. Fajardo.

16 **PROSPECTIVE JUROR FAJARDO:** Thank you.

17 **THE COURT:** Juror No. 113?

18 All right. Good morning, Mr. Bolivar.

19 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Good morning.

20 **THE COURT:** You drive two kids, is it to school or
21 what -- tell me a little bit more about the situation.

22 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Well, actually,
23 something came up this morning that is different. My wife just
24 got her citizenship, so she cannot travel overseas. And I have
25 to fly my kiddo, he's 13 years old and he's going to school in

JURY VOIR DIRE

1 Venezuela, so I may have to resolve that. Otherwise, I'm happy
2 to serve and make it happen. I just have to resolve that.

3 **THE COURT:** Oh.

4 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** She has to go --
5 when you get a citizenship, you get your green card taken away
6 while you get a passport.

7 **THE COURT:** Oh.

8 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** So she was due to
9 take him this week back to Venezuela. Now it will have to be
10 me if she doesn't have a passport, so I'll have to resolve
11 that.

12 **THE COURT:** When is he supposed to be in Venezuela?

13 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** January 20th.

14 **THE COURT:** Oh, you're going to have the resolve that
15 one pretty quick.

16 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Yeah, yeah, so I
17 got to work that out. Again, I'm super excited to be here and
18 help out, so I just need to resolve that.

19 **THE COURT:** Is -- will you know when --

20 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** It's happening
21 right now. So I can let you know by, like, 3:00 p.m. this
22 afternoon.

23 **THE COURT:** Okay. All right. So you will know
24 whether you made alternate arrangements by this afternoon?

25 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Yep, yep.

JURY VOIR DIRE

1 **THE COURT:** Okay. Other than that, that's the only
2 problem?

3 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Yep.

4 **THE COURT:** All right. Any counsel want to follow up
5 with any questions?

6 **MR. SPIRO:** No, Your Honor.

7 **MR. APTON:** Mr. Bolivar, what would a resolution look
8 like? You have to transport your child to Venezuela?

9 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** So if my wife gets
10 a passport, she can take him. If she doesn't get a passport, I
11 will have to travel with him.

12 **MR. APTON:** And that has to be on January 20th?

13 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Yep. We could
14 delay it a week or so but he has to be in school before
15 February starts.

16 **MR. APTON:** Thank you.

17 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Yep.

18 **THE COURT:** So the key is whether your wife can get
19 the passport?

20 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Yep. It happens
21 in this building, by the way.

22 **THE COURT:** Yeah, I was going to say, can I help in
23 any way? No.

24 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Please.

25 **THE COURT:** All right. Well, good luck.

JURY VOIR DIRE

1 Let's see, Juror No. 114. All right. Ms. Kumar?

2 **PROSPECTIVE JUROR KUMAR:** Hi, good morning.

3 **THE COURT:** Good morning. So you have three kids?

4 **PROSPECTIVE JUROR KUMAR:** Yes.

5 **THE COURT:** And you do pick up and drop off every day?

6 **PROSPECTIVE JUROR KUMAR:** Yes.

7 **THE COURT:** And you live in Pleasanton?

8 **PROSPECTIVE JUROR KUMAR:** Yes.

9 **THE COURT:** And are you working outside the home or a
10 full-time mom or --

11 **PROSPECTIVE JUROR KUMAR:** Yeah, I'm full-time mom.

12 **THE COURT:** Okay. And how old are your children?

13 **PROSPECTIVE JUROR KUMAR:** My older one is 17 years old
14 and the younger ones are twins, so they are 12.

15 **THE COURT:** Twelve and 17?

16 **PROSPECTIVE JUROR KUMAR:** Yes.

17 **THE COURT:** Does your 17-year-old have a driver's
18 license?

19 **PROSPECTIVE JUROR KUMAR:** Oh, he didn't take it. Next
20 week he has test, driving test.

21 **THE COURT:** Oh, okay. Too bad he didn't take it last
22 week, maybe there's your answer.

23 Is there anybody else that can drive your kids?

24 **PROSPECTIVE JUROR KUMAR:** Actually, I didn't ask my
25 friends. And my husband, he can, but it's hard because he does

JURY VOIR DIRE

1 late work, so he wake -- wakes up late, around 8:00, so it's
2 hard to drop him -- them, sorry.

3 **THE COURT:** So it's hard for your husband, and you do
4 not have friends, or you do have friends --

5 **PROSPECTIVE JUROR KUMAR:** I have friends, but I didn't
6 ask them.

7 **THE COURT:** You haven't asked them yet?

8 **PROSPECTIVE JUROR KUMAR:** Yeah, yeah, I didn't ask
9 them.

10 **THE COURT:** And what time do they go to school and --

11 **PROSPECTIVE JUROR KUMAR:** Oh, they go -- my twins go
12 7:50, and then the older one goes 8:30.

13 **THE COURT:** And what time do they get off school?

14 **PROSPECTIVE JUROR KUMAR:** 3:00, 3:05 and 3:22.

15 **THE COURT:** Hmm. And you live -- they're out in
16 Pleasanton.

17 **PROSPECTIVE JUROR KUMAR:** Yes.

18 **THE COURT:** Yeah, that would be hard to get out there.

19 **PROSPECTIVE JUROR KUMAR:** Yeah. (Inaudible)

20 **THE COURT:** So you need somebody else.

21 **PROSPECTIVE JUROR KUMAR:** Yeah.

22 **THE COURT:** So the bottom line is, right now, you're
23 kind of it in terms of driving?

24 **PROSPECTIVE JUROR KUMAR:** No. I took public transport
25 today.

JURY VOIR DIRE

1 **THE COURT:** No, I mean driving your children to
2 school, you're the only one?

3 **PROSPECTIVE JUROR KUMAR:** Oh, yeah. Yeah.

4 **THE COURT:** All right. Any follow-up questions?

5 **MR. SPIRO:** No, Your Honor.

6 **MR. APTON:** No, Your Honor.

7 **THE COURT:** All right. Thank you.

8 **PROSPECTIVE JUROR KUMAR:** Thank you.

9 **THE COURT:** Juror No. 120.

10 **PROSPECTIVE JUROR CHEN:** Good morning.

11 **THE COURT:** Thank you. Good morning, Mr. Chen.
12 You're a scientist with Chevron?

13 **PROSPECTIVE JUROR CHEN:** Yes.

14 **THE COURT:** And you say you have a business trip
15 planned, well, between today and --

16 **PROSPECTIVE JUROR CHEN:** It's tomorrow and Thursday.

17 **THE COURT:** And is that -- where is that to?

18 **PROSPECTIVE JUROR CHEN:** It's to Houston.

19 **THE COURT:** So you have a trip planned for Houston
20 starting tomorrow?

21 **PROSPECTIVE JUROR CHEN:** Yes.

22 **THE COURT:** All right. And is it the kind of trip
23 that absolutely requires your physical presence?

24 **PROSPECTIVE JUROR CHEN:** I would say yes. I mean, the
25 issue is -- to me, the real issue is the three weeks is kind of

JURY VOIR DIRE

1 too long, considering my situation.

2 **THE COURT:** Maybe you can tell me a little more,
3 because obviously --

4 **PROSPECTIVE JUROR CHEN:** My issue really is not my
5 personal issue. I can overcome my personal issue.

6 **THE COURT:** Yeah.

7 **PROSPECTIVE JUROR CHEN:** It's the support I ordinarily
8 provide to my organization, because I'm a manager for an
9 organization of about 55 people and I provide support to them.
10 They support on many different things. This is the beginning
11 of the year. This is the most important time for the year. We
12 do the project planning, funding, including other things,
13 employee salary treatment, rating, promotions, such and such.
14 if I'm not in there, my folks are not represented. So that's
15 why I said it's -- they are not going to be happy.

16 **THE COURT:** So there's planning going on at this
17 point; is that what you're -- your unit is part of a planning
18 process --

19 **PROSPECTIVE JUROR CHEN:** Yeah, there are many things
20 happening now. It's the planning on the funding project, the
21 budget, which project will go, which project will be killed,
22 you know. Also we look at the last year's performance, the
23 rating of each employee, the salary treatment, the promotion,
24 all kind of happening in the next few weeks.

25 **THE COURT:** So you represent the 55 people in your

JURY VOIR DIRE

1 unit?

2 **PROSPECTIVE JUROR CHEN:** Yes.

3 **THE COURT:** And that is representing them in a larger
4 meeting that goes on?

5 **PROSPECTIVE JUROR CHEN:** Yes.

6 **THE COURT:** A planning meeting?

7 **PROSPECTIVE JUROR CHEN:** Yes.

8 **THE COURT:** And is there a meeting planned in the next
9 three weeks?

10 **PROSPECTIVE JUROR CHEN:** Yeah, that's what I'm talking
11 about on the next three weeks, so many things, it's planned.
12 Because they're not going to change because I can't be in
13 there.

14 **THE COURT:** And if you're not there, is there -- do
15 you have a second in command that could take over?

16 **PROSPECTIVE JUROR CHEN:** It won't work well. I can
17 send a person to be in the meeting. But if the person doesn't
18 have the knowledge and experience as I have, you know, they
19 can't do much.

20 **THE COURT:** So you're the only one with all the
21 knowledge, that has all the knowledge.

22 **PROSPECTIVE JUROR CHEN:** It's -- pretty much, for the
23 specific situation, what's going to happen in the next few
24 weeks.

25 **THE COURT:** And this is all happening in the next

JURY VOIR DIRE

1 three weeks.

2 **PROSPECTIVE JUROR CHEN:** Yeah, yeah, because that's
3 the beginning of the year. That's what we already do every
4 year.

5 **THE COURT:** All right. Any followup questions?

6 **MR. SPIRO:** No, Your Honor.

7 **MR. APTON:** Mr. Chen, just real quick, I assume these
8 meetings occur throughout the day, not just during a particular
9 portion of the day?

10 **PROSPECTIVE JUROR CHEN:** Yeah. It's during the day.
11 It's, you know, it's scheduled every -- any hours in the day,
12 depending on the availability of the leadership people.

13 **MR. APTON:** Thank you.

14 **PROSPECTIVE JUROR CHEN:** Yeah.

15 **THE COURT:** All right. Thank you, Mr. Chen.

16 **PROSPECTIVE JUROR CHEN:** Thank you.

17 **THE COURT:** Juror No. 126.

18 **PROSPECTIVE JUROR LEUNG:** Good morning.

19 **THE COURT:** Hi. Good morning, Mr. Leung. You work
20 graveyard.

21 **PROSPECTIVE JUROR LEUNG:** Yeah, they actually switched
22 it because of jury duty. So that's good, it's fine.

23 **THE COURT:** Oh, so you would be able to serve, then?

24 **PROSPECTIVE JUROR LEUNG:** Yeah.

25 **THE COURT:** Okay. I appreciate your making that

JURY VOIR DIRE

1 effort.

2 **PROSPECTIVE JUROR LEUNG:** Uh-huh.

3 **THE COURT:** Thank you. And thank you for your service
4 in the medical field.

5 Okay. So there's no reason in terms of scheduling --

6 **PROSPECTIVE JUROR LEUNG:** No, it's all fine.

7 **THE COURT:** Okay, great, thank you.

8 Juror No. 128.

9 **THE COURTROOM DEPUTY:** 128?

10 **THE COURT:** Is 128 here?

11 **MR. SPIRO:** No, Your Honor.

12 **THE COURT:** Oh, that's the one -- okay, no, not here.

13 Okay. Number 144?

14 **PROSPECTIVE JUROR GALLAGHER WHITE:** Good morning.

15 **THE COURT:** Good morning, Ms. Gallagher-White, is that
16 the --

17 **PROSPECTIVE JUROR GALLAGHER WHITE:** Yes.

18 **THE COURT:** You're an attorney?

19 **PROSPECTIVE JUROR GALLAGHER WHITE:** Yes.

20 **THE COURT:** Are you -- do you do litigation, or
21 transactional, or what kind of work do you do?

22 **PROSPECTIVE JUROR GALLAGHER WHITE:** I'm actually
23 retired from the D.A.'s office. And I am in-house counsel for
24 a company that is located here in San Francisco.

25 **THE COURT:** And it looks like it is some kind of

JURY VOIR DIRE

1 environmental company?

2 **PROSPECTIVE JUROR GALLAGHER WHITE:** That's correct.

3 **THE COURT:** Do they do environmental cleanup or
4 planning --

5 **PROSPECTIVE JUROR GALLAGHER WHITE:** Yes, remediation
6 in buildings like this one.

7 **THE COURT:** Oh, well, luckily this building was done
8 very extensively a number of years ago. Hopefully they did a
9 good job because I have been here 21 years.

10 So, you have a long ways to go. Is that the main issue,
11 is transportation to get here from Santa Rosa?

12 **PROSPECTIVE JUROR GALLAGHER WHITE:** Yeah, I just -- I
13 don't know, I think other people are driving just as far, but
14 Santa Rosa is a pretty good haul. Like, I left my house at
15 6:00 this morning.

16 **THE COURT:** Right. But you can drive.

17 **PROSPECTIVE JUROR GALLAGHER WHITE:** I can do it, yeah.
18 I can do it; I'm just not loving it.

19 **THE COURT:** Yeah. Well, and I -- you know, we
20 appreciate that. It's a large judicial district. And, and
21 sometimes people do have to come, and I know the commute down
22 101 is no fun.

23 **PROSPECTIVE JUROR GALLAGHER WHITE:** No. And
24 particularly with the weather that we've been having, that is a
25 concern. I just don't want to, having done jury trials, hold

JURY VOIR DIRE

1 anybody up, make anybody late. I'm pretty mortified of that.
2 So I'll just get here early.

3 **THE COURT:** Well, I appreciate your effort doing that.
4 Hopefully, it's looking like the long-term forecast for the
5 next couple of weeks is drier than normal, so we will see if
6 that happens.

7 **PROSPECTIVE JUROR GALLAGHER WHITE:** Thank you.

8 **THE COURT:** Thank you.

9 Any followup questions?

10 **MR. SPIRO:** No, Your Honor.

11 **MR. APTON:** No, Your Honor.

12 **THE COURT:** All right. Thank you, Ms. Gallagher
13 White.

14 Juror No. 150.

15 **PROSPECTIVE JUROR DOLRUEDEJ:** I actually resolved my
16 problem, so I should be okay.

17 **THE COURT:** So you had some child care issues but it's
18 okay now.

19 **PROSPECTIVE JUROR DOLRUEDEJ:** Yeah, I make an
20 arrangement.

21 **THE COURT:** I appreciate that, Ms. Dolruedej.

22 **PROSPECTIVE JUROR DOLRUEDEJ:** Oh, okay.

23 **THE COURT:** All right. Let's see here. All right.
24 According to my -- now, those of you who didn't say you had an
25 -- indicated that you are okay or didn't say you couldn't

JURY VOIR DIRE

1 serve, is there anybody that hasn't said anything yet that
2 thinks they have got a problem in serving during the three-week
3 period?

4 (A hand is raised)

5 **THE COURT:** Okay. If we can bring the microphone up
6 to the front row here. Raise your hand, ma'am? And then tell
7 me your -- and --

8 **PROSPECTIVE JUROR CAZESSUS:** I'm Q, my name is Yolanda
9 Cazessus.

10 **THE COURT:** Do you know what Juror No. you are?

11 **PROSPECTIVE JUROR CAZESSUS:** Oh goodness, 57.

12 **THE COURT:** 57. Okay.

13 **PROSPECTIVE JUROR CAZESSUS:** Yes.

14 **THE COURT:** Hold on. Okay. 57. Okay. Yes, if you
15 could tell me what's happening.

16 **PROSPECTIVE JUROR CAZESSUS:** So I don't necessarily
17 have an issue doing the three weeks. But you mentioned earlier
18 that it might go longer. And that's where, where I have a
19 concern. My boyfriend is having radiation during the week of
20 February 8th. Now, truth be told, he will be in the hospital
21 for 14 days. But that's the only thing.

22 So during the first three weeks, I'm good. But past that
23 is where I run into a problem.

24 **THE COURT:** Okay. And we are hoping to conclude this
25 case and get it to the jury by the week that ends on the 3rd,

JURY VOIR DIRE

1 so, you know, we'll see how it goes. It could go earlier, we
2 could get it to the jury earlier.

3 **PROSPECTIVE JUROR CAZESSUS:** Uh-huh.

4 **THE COURT:** If deliberations goes over to the next
5 week, which would be the 6th, the 7th, I know he's going in on
6 the 8th, would that be a problem?

7 **PROSPECTIVE JUROR CAZESSUS:** No. As long as -- as
8 long as I can reach him by then, during that week at least.

9 **THE COURT:** Okay. So the 8th is kind of the important
10 day for you?

11 **PROSPECTIVE JUROR CAZESSUS:** Yeah. He's in there for
12 a good -- a while.

13 **THE COURT:** Okay. So you would be able to -- sounds
14 like you're iffy if it goes a lot longer, and you want to be
15 there with your boyfriend?

16 **PROSPECTIVE JUROR CAZESSUS:** Correct.

17 **THE COURT:** All right. Okay. Anybody else that we
18 haven't spoken to?

19 (Hands raised)

20 **THE COURT:** Oh, well, there's a gentleman -- Number --

21 **PROSPECTIVE JUROR CAVENDER:** Hi, I'm Kevin Cavender,
22 I'm in seat O and I'm No. 50.

23 **THE COURT:** You are No. 50?

24 **PROSPECTIVE JUROR CAVENDER:** Yes, sir.

25 **THE COURT:** All right hold on. Just hold on.

JURY VOIR DIRE

1 **PROSPECTIVE JUROR CAVENDER:** Sure.

2 **THE COURT:** Let me get organized here.

3 All right. Yes, Mr. Cavender.

4 **PROSPECTIVE JUROR CAVENDER:** I didn't realize we were
5 making excuses but anyway I'm an ICU nurse at UCSF. I'm not
6 aware that they will pay, but I'm a bit concerned for financial
7 hardship just because I missed a few months from August to
8 December, out with COVID, myself. Other than that, have been a
9 night-shift worker for 36 years. I work a 7p to 7a and I'm
10 usually home in bed right now by 8:30. So I don't know if it
11 would be a problem. Otherwise, it would be an honor to serve.

12 **THE COURT:** All right. Well, let's take one thing at
13 a time. So in terms of the night shift, you normally go to bed
14 after work.

15 **PROSPECTIVE JUROR CAVENDER:** Yes, sir.

16 **THE COURT:** Have you had experience of having to sort
17 of shift things around and use your working -- your waking
18 hours after work, and then sleep afterward?

19 **PROSPECTIVE JUROR CAVENDER:** I mean, if there's a
20 special circumstance, but generally not.

21 **THE COURT:** I'm just wondering if you have tried that,
22 and how you do under those circumstances.

23 **PROSPECTIVE JUROR CAVENDER:** Okay. I can try. I
24 can't think of anything that comes to mind that I particularly
25 had to stay awake during the daytime, no.

JURY VOIR DIRE

1 **THE COURT:** But it would be a shift in your routine.

2 **PROSPECTIVE JUROR CAVENDER:** Yes, correct.

3 **THE COURT:** And the jury pay, I would be surprised if
4 UCSF does not pay, but --

5 **PROSPECTIVE JUROR CAVENDER:** Me, too. It is my
6 understanding that they do not, no, as a -- speaking to someone
7 last week.

8 **THE COURT:** During the break could you --

9 **PROSPECTIVE JUROR CAVENDER:** Absolutely.

10 **THE COURT:** -- make a call and find out?

11 **PROSPECTIVE JUROR CAVENDER:** Absolutely.

12 **THE COURT:** Might tell whoever you are talking to that
13 would set a bad example if they didn't pay, but --

14 **PROSPECTIVE JUROR CAVENDER:** Agreed.

15 **THE COURT:** Okay. Thank you.

16 **PROSPECTIVE JUROR CAVENDER:** Yes, sir.

17 **THE COURT:** We had a hand over here.

18 (A hand is raised)

19 **THE COURT:** Hi. In front. If you could tell us your
20 name and jury number?

21 **PROSPECTIVE JUROR GOMEZ:** Good afternoon, Your Honor.

22 **THE COURT:** Hi.

23 **PROSPECTIVE JUROR GOMEZ:** My number is 31.

24 **THE COURT:** 31. And you are Ms. Gomez?

25 **PROSPECTIVE JUROR GOMEZ:** Yes.

JURY VOIR DIRE

1 **THE COURT:** Okay. Hold on for a second here.

2 Okay.

3 **PROSPECTIVE JUROR GOMEZ:** Okay. My big concern is my
4 brother just passed away on Sunday.

5 **THE COURT:** Oh, I'm sorry.

6 **PROSPECTIVE JUROR GOMEZ:** In Mexico. And -- I'm
7 sorry. My mom was alone in Mexico and she's 89. That's why I
8 want to go to stay with her. This -- difficult days.

9 **THE COURT:** So you want to travel --

10 **PROSPECTIVE JUROR GOMEZ:** Yeah.

11 **THE COURT:** Immediately.

12 **PROSPECTIVE JUROR GOMEZ:** Yeah.

13 **THE COURT:** To be with your mother.

14 **PROSPECTIVE JUROR GOMEZ:** Yes.

15 **THE COURT:** All right, I'm sorry for your loss.

16 **PROSPECTIVE JUROR GOMEZ:** Thank you.

17 **THE COURT:** Any questions? Any followup?

18 **MR. SPIRO:** No, Your Honor.

19 **MR. APTON:** No, Your Honor.

20 **THE COURT:** Okay. Thank you. Anybody else?

21 (No response)

22 **THE COURT:** All right. What we're going to do then is
23 we're going to take a break. And we're going to break for
24 probably about 20 minutes, or maybe half an hour. And I would
25 like to ask the following jurors to be ready to come back here

JURY VOIR DIRE

1 because we may have some questions for you that we're going to
2 ask individually. And then, so if you could come back in half
3 an hour, I'll read out the numbers in a second.

4 And those of you who aren't in this group, if you could
5 come back in one hour. You can have a one-hour break. There
6 is a cafeteria downstairs, you can actually have an early
7 lunch. Or there are restaurants across the street in various
8 places. But the group I'm going to name, you'll have a half
9 hour, I guess. Sorry about that.

10 So that's Jurors No. 40, 50, 79, 97, 101, 118, 124, and
11 150. I'll read those again. 40, 50, 79, 97, 101, 118, 124,
12 and 150. If you just come back a half hour early, appreciate
13 it. Got a couple of questions for you. And then the rest of
14 the group will come back in an hour.

15 So while you are out there, please do not talk about this
16 case with anyone. Don't talk about this case amongst
17 yourselves. We want to make sure you keep sort of an open
18 mind. You will get some instructions later. If you are
19 excused then you can talk to anybody you want. But for now I
20 would like you to keep to yourselves, not talk to anyone, talk
21 amongst yourselves, don't go on Google or don't try to read
22 anything about this case.

23 We really want people to -- if you are selected as a
24 juror, to -- to base your verdict only on what's happened in
25 this courtroom, what you hear in this courtroom. So if you

JURY VOIR DIRE

1 could, for the next bit of time try to insulate yourself, I
2 would appreciate that.

3 So we'll see that group of, I think it's eight of you, in
4 half an hour. And the rest of you have one hour. Thank you.

5 **THE COURTROOM DEPUTY:** All rise for the jury.

6 (Jury venire excused from the courtroom)

7 (The following proceedings were held outside of the
8 presence of the Jury)

9 **THE COURT:** Okay. Have a seat, everyone. I realize I
10 didn't build in any time for us to have lunch. But the faster
11 we get through this phase the more time you have for lunch.
12 That is the incentive.

13 On the hardships. Let's talk about that. So I'm going to
14 go through the list in order as I have them. First is Juror
15 No. 8, Ms. Liu, who's got the visa with the father in the
16 hospital now, and she's got a flight. Seems to me that's a
17 hardship. Any objection?

18 **MR. APTON:** No, Your Honor, we agree.

19 **THE COURT:** All right. Mr. Spiro?

20 **MR. SPIRO:** Just so I -- just a followup question,
21 just so I understand the Court's reasoning.

22 **THE COURT:** Um.

23 **MR. SPIRO:** So that I don't necessarily make the same
24 mistake twice, I just want to make sure that I understand the
25 Court's thinking.

JURY VOIR DIRE

1 **THE COURT:** Sure. I think here there's an urgency
2 because her father is in the hospital with COVID. She's got
3 the visa, she's got the flight. And frankly, if I had said
4 "No, you've got to sit through this trial," number one, she may
5 not have her full attention. Number two, I'm not sure how we
6 would all feel if her father passes.

7 **MR. SPIRO:** Understood. There is no objection.

8 **THE COURT:** Okay. So we will relieve her.

9 No. 13 is Ms. Jahan, who does the community nonprofit for
10 developmentally disabled, there. Is only two there, and she
11 gets no jury pay. So the no jury pay is sufficient under our
12 jury rules, we don't make people serve for three weeks without
13 pay unless they have some way around it like different hours or
14 something. I didn't hear that from her.

15 **MR. APTON:** Your Honor, plaintiff would excuse her.

16 **THE COURT:** All right.

17 **MR. SPIRO:** Yes, Your Honor. We agree.

18 **THE COURT:** Okay. Good. Then we have No. 31 who's
19 looking good until we just found out her brother just passed
20 away, and her mother's alone, and she wants to travel now to
21 Mexico to be with her mother. Given the family circumstance,
22 and the unexpected death or the intervening death, seems to me
23 that's a good reason to excuse that juror.

24 Any objection?

25 **MR. APTON:** No, Your Honor.

JURY VOIR DIRE

1 **MR. SPIRO:** No, Your Honor.

2 **THE COURT:** Okay, we will excuse No. 31.

3 Then we have got No. 44. Oh, she's the one with the
4 one-year-old that still feeds, not out of a bottle, but by
5 breast. So I'm hesitant to second-guess motherhood and
6 parenthood.

7 **MR. SPIRO:** I am normally, too, Your Honor. But of
8 course, some of the answers -- and I didn't want to pry in
9 front of the other jurors -- suggested that while imperfect, it
10 would not be unfeasible. It doesn't strike me that it
11 necessarily checks any of the proper for-cause boxes. The
12 child is, you know, over one year old, and doesn't just
13 breastfeed.

14 So I -- I think we would have to examine further if we
15 were going to excuse that juror for cause, for cause based on
16 hardship.

17 **THE COURT:** All right. Any comments from the
18 plaintiffs?

19 **MR. APTON:** Yeah, Your Honor, I mean, based on the
20 limited few questions I asked her, it's more than just food,
21 it's the baby's napping schedule. And I know that my wife,
22 when she's concerned about the baby's nap, that's it. And me
23 too, frankly, because a tired, hungry baby does not work. So I
24 don't understand how she would even be able to pay attention to
25 the trial, honestly.

JURY VOIR DIRE

1 **THE COURT:** I'm going to excuse her. I think she
2 stated a hardship. I'm not going to second-guess why the baby
3 is still breastfeeding, but it sounds like he won't take it
4 from a bottle; that's how he feeds, in part. And, and she's
5 there for his naps, et cetera. So I think the parenting
6 issues, obligations are a reason to excuse her. So I'm going
7 to excuse No. 44.

8 45 is the equipment operator, but he says he could serve.

9 **MR. APTON:** Your Honor, I was a little confused by his
10 response, because initially he said he had a hardship and
11 wouldn't, and then he seemed to reverse course at a certain
12 point during Your Honor's examination. So, I'm just not quite
13 sure whether he can or cannot --

14 **THE COURT:** Well, bottom line says he basically gets
15 paid for jobs he does. When I questioned him initially he
16 wasn't able to identify any upcoming jobs. He said well,
17 maybe, you know, because he's not getting paid except when he
18 is working. And if he doesn't have anything scheduled, and
19 then he's not losing anything, and then he also commented, "I
20 can find other ways to make up for it."

21 So I have to take him at his word. You know, if he says
22 he can serve, I've never excused somebody because I don't
23 believe them, they -- now, there may be other -- if you are
24 getting at his motivation, whether he may have a bias, we will
25 get to that later.

JURY VOIR DIRE

1 **MR. APTON:** No, my concern, Your Honor, is right now
2 he has no job scheduled, and so he can serve. But if he hasn't
3 worked in a while and a week goes by and all of a sudden a good
4 job comes in, he is going to want to take it, and we might lose
5 him in the middle of the process.

6 **THE COURT:** Well, he says he could just serve. And I
7 told him it's three weeks, I repeated that several times. He
8 knows he can't just up and leave.

9 Comments from the defense?

10 **MR. SPIRO:** No. Obviously it is not a hardship.

11 **THE COURT:** So, I mean, I'm not going to excuse him on
12 hardship. Whether he has other motives, I don't know, but as
13 far as hardship goes he is still in.

14 No. 48 is Ms. De La Cruz, that's got the anxiety issue,
15 which, it's not a certainty, but there's a chance, seems to me
16 a significant chance that jury service could be stressful and
17 trigger an anxiety attack.

18 **MR. SPIRO:** Your Honor, the bar to hardship is a very,
19 very high one. And based on -- I don't have as much concern
20 for this juror as some of the others that -- that made possible
21 hardship statements. But this juror has monthly therapy,
22 doesn't know whether or not -- monthly therapy is not
23 particularly unusual, and doesn't know whether or not this
24 would cause an issue. She's never done it before, so it's
25 causing some concern. I think that's the case for many, if not

JURY VOIR DIRE

1 most, jurors. And she works multiple jobs that involve lots of
2 decision-making and difficulties.

3 I don't see how, just because a juror has some ADD or
4 feelings of anxiety, that that -- that doesn't seem to me to be
5 a hardship, frankly.

6 **THE COURT:** All right. Response?

7 **MR. APTON:** Your Honor, she's sitting quite close to
8 us. I did notice that she was shaking. And part of the
9 concern with her is that she said she might be triggered. And
10 I don't know how that would affect her ability to pay
11 attention, whether at some point she might decide not to pay
12 attention so as to avoid a panic attack. And so there's some
13 concern there. And if we're taking her at her word, she says
14 she can't serve.

15 **THE COURT:** All right, I'm going to excuse her,
16 because I do take her at her word. I found that her concerns
17 seem credible. She didn't seem to be making something up just
18 to get out of service. And the risk of anxiety, the risk would
19 mean she might have to -- she might not be able to continue to
20 serve which then jeopardizes our jury, or she's not able to pay
21 full attention, which would not be ideal in a case such as
22 this. So I'm going to excuse her.

23 No. 50 is the nurse that works night shift. Usually
24 sleeps during these hours, would have to shift. But is looking
25 into jury pay.

JURY VOIR DIRE

1 So I think the night shift is not a sufficient reason, but
2 the pay, if, in fact, UCSF does not pay, then -- well, I guess
3 there is -- I would want to find out more, because if they're
4 still working, they're not losing any pay.

5 **MR. SPIRO:** Right. I would suggest with this juror,
6 if the Court's -- obviously it's the Court's judgment here, but
7 given he's coming back in the group that comes back on the
8 early side, we can -- we can address this with him.

9 **THE COURT:** Yeah.

10 **MR. SPIRO:** One on one, then.

11 **THE COURT:** I think that is fair.

12 **MR. APTON:** I think that makes sense, Your Honor.

13 **THE COURT:** All right. Okay. Thank you.

14 51 can serve, she is the one with the boyfriend that is
15 going in for radiology. Radiation. But I think her concern is
16 if this goes deep into the fourth week.

17 **MR. APTON:** Sorry, Your Honor, you said 51?

18 **THE COURT:** -7? Did I say 51? I meant 57. Sorry to
19 have misspoke. Ms. Yolanda Cazessus. So.

20 It seems to me she's eligible.

21 **MR. APTON:** Yes, Your Honor. And especially if we
22 move quickly, hopefully we will be done the week before her
23 boyfriend goes --

24 **THE COURT:** Hope so, too. Any objection to keeping
25 her in?

JURY VOIR DIRE

1 **MR. SPIRO:** No. The bar to hardship is a high one,
2 and we don't think this meets the bar to hardship.

3 **THE COURT:** All right. 58, the designated driver for
4 the mom, I guess it is.

5 **MR. SPIRO:** Right. This was also not the type of
6 circumstance that jurors are excused for hardship. It was
7 nothing in it that made no other possible arrangement
8 available. None, none of those other possible arrangements,
9 did he say unequivocally he could not do. And it just does not
10 meet the bar for hardship. So we would have to object.

11 **THE COURT:** He did say there's an appointment
12 tomorrow.

13 **MR. SPIRO:** Correct, but he also indicated that
14 virtual is possible, moving appointments is possible, the
15 timing of appointments, that it was a non-urgent appointment.
16 So in these circumstances, jurors are just not excused for
17 hardship. It's hard to ask jurors who have a lot going on to
18 stay, but in our judgment, it doesn't even come close, frankly,
19 to meeting the very, very high bar to excuse for hardship.

20 **THE COURT:** All right. Plaintiff's view?

21 **MR. APTON:** Your Honor, if the Court wanted to ask
22 some followup questions perhaps during the break he could find
23 out whether the appointments are movable. But otherwise, I
24 tend to agree that without any definite appointments other than
25 tomorrow, he seems like he could serve.

JURY VOIR DIRE

1 **THE COURT:** Yeah, I wasn't convinced that -- I mean
2 maybe I should ask exactly what the mother's health condition
3 is. I was a little hesitant to ask. But in any event, I'm not
4 convinced that he has to be there every day for three weeks.
5 So I'm not going to excuse him. I don't want to be too
6 hard-nosed, but it doesn't seem to me that he's met the burden.
7 If we get down to him I may ask him one more time, but let's
8 see if he comes into play.

9 No. 60 doesn't have the pumping problem, but has the
10 childcare problem. And it seems like everything's good except
11 Monday. I mean, she thinks she can get care on Friday.

12 **MR. SPIRO:** Your Honor, this was somebody, I don't
13 know whether the Court is -- because I've never tried a case
14 before Your Honor I wasn't going to start using nonverbal body
15 signals, but she was one of the -- the early juror that we
16 agreed to put back, both sides agree, so I think given that
17 when I heard the issues, I thought we -- we might as well err
18 on the side, I agree with the Court's --

19 **THE COURT:** Well, she's coming back anyway.

20 **MR. SPIRO:** Right.

21 **THE COURT:** She's coming in with the group so we don't
22 have to --

23 **MR. SPIRO:** Right.

24 **THE COURT:** If we have more questions, we'll see. May
25 be moot.

JURY VOIR DIRE

1 68.

2 **MR. SPIRO:** Your Honor --

3 **MR. APTON:** Your Honor, this juror, I mean, he -- he
4 is in a predicament. He has a gas station. He is seemingly
5 the single point of failure within the organization. And if
6 anything were to go wrong he needs to be able to attend, so he
7 says.

8 And if that's the case I just -- I don't feel confident
9 that he's going to either, A, attend the full trial despite
10 having to do so, and B, being able to actually focus on the
11 conflicts, issues that are going to be tried before the Court.

12 **MR. SPIRO:** Yes, Your Honor. This is another example
13 of plaintiff seeing that somebody is making a comment that is
14 net positive of Mr. Musk and then sort of embellishing reasons.
15 He -- what he really said was he has a job, sometimes there are
16 emergencies. If there is an emergency he might have to take a
17 phone call. The gas station is operating right now.

18 This is not hardship under any circumstance. He did not
19 say his livelihood was dependent on it in any way. He didn't
20 say that the property was in danger or that he has some duty to
21 society. None of the reasons given for hardship --

22 **THE COURT:** I'm going to keep him in. I'm denying the
23 hardship. He can -- his wife is there; he's got employees. If
24 something comes up, every 90 minutes he can make a call. He
25 can do Zoom or something. You know.

JURY VOIR DIRE

1 Now, if there is an explosion or something he really has
2 to be there, but I'm not convinced that during the three weeks,
3 that that is something that is sufficiently likely to happen
4 that would disqualify him. So I'm not going to give him a
5 hardship excuse.

6 No. 74. She says she is now available, Ms. Bransfield.

7 81, we've got issues to talk about with him. I probably
8 should call him in. I'm not sure what he's talking about. I
9 guess in terms of the hardship he could commute, he could get
10 reassigned. He works for -- I mean, he could get the manager
11 to reassign somebody, so I don't see a financial, I don't see a
12 work-related hardship.

13 I'm not sure what he's getting at when he says something
14 about the outcome of this case could affect his customers, who
15 could then affect his employee -- or his employer and then
16 affect him.

17 **MR. APTON:** Your Honor, I think what he's getting at
18 is if he rules against Tesla, it could in turn affect him
19 directly on some level.

20 **THE COURT:** So some of his customers, his employer's
21 customers may do -- work for Tesla, sounds like, or provide
22 parts or something?

23 **MR. APTON:** Whether or not it's actually likely to
24 happen, he feels that way. So perhaps it's a conversation for
25 later in the day with him. I think there's probably grounds

JURY VOIR DIRE

1 for a for-cause choice. But as far as the hardship argument
2 goes or the hardship issues go, I would agree that he probably
3 does not have a hardship.

4 **THE COURT:** I'm not going to excuse him for hardship
5 but we will find out if there's more there.

6 Let's see. No. 101, her mother's 92. She wants to go as
7 soon as she gets the visa. Her mother's recovering from COVID,
8 is in a nursing care home. This one's not quite as compelling
9 in the sense that she doesn't have a visa in hand, but the
10 mother is elderly and in some form of healthcare, and she
11 thinks she can get the visa in a week.

12 So if that's realistic, to delay her by two extra weeks,
13 under the circumstances, my instinct is to believe her. Any
14 objection?

15 **MR. SPIRO:** No, Your Honor.

16 **MR. APTON:** No, Your Honor.

17 **THE COURT:** All right, we will excuse 101.

18 103 is the architect that says now that we are off
19 Thursday, she can make it work.

20 Oh, No. 112, they don't -- let's see. He says they do get
21 jury pay, interestingly. And that he could make it work, given
22 the 2:00. It's only Tuesdays. And he works until 2:00 anyway.
23 So it seems to me he's okay.

24 **MR. APTON:** Yeah. I think the next couple had issues
25 but said they were okay, yes. Including him.

JURY VOIR DIRE

1 **THE COURT:** Okay.

2 **MR. APTON:** I don't believe 112 or 113 even asked to
3 be relieved for hardship by the end of the colloquy.

4 **THE COURT:** Well, Mr. Bolivar will know if the wife
5 can get the passport. Otherwise he has to bring his son to
6 Venezuela, and nobody else can, so that is still an open
7 question. He's who we need to hear back from.

8 **MR. APTON:** For 112, I, I would agree he can probably
9 serve; the hardship is limited.

10 For 113, are we going to proceed throughout the course of
11 the day, and then if his wife doesn't get the passport we will
12 replace him --

13 **THE COURT:** I'm going to keep him in for now. You'll
14 know before you have to get to strikes.

15 **MR. APTON:** Well, he said 3:00 was --

16 **THE COURT:** Well, I may -- we may need to know an
17 answer earlier than that.

18 **MR. APTON:** I'm waiting on a renewal for a passport as
19 well. Is it possible --

20 **THE COURT:** Yeah, I can help you out. Talk to me
21 during the break and we'll...

22 (Laughter)

23 **THE COURT:** We may have to -- you know, if we don't
24 know, we will have to fish or cut bait on him.

25 **MR. APTON:** Okay.

JURY VOIR DIRE

1 **THE COURT:** And I think it may be, frankly, too big of
2 a chance. I don't want to seat somebody and then we find out
3 he can't serve. I want to start with nine.

4 **MR. APTON:** And keep them, right.

5 **MR. SPIRO:** I didn't interpret his answers that way.
6 When somebody wants to get out of jury duty, he could -- he
7 could see from watching the rest of this room how to get out.
8 He seemed like he thought it was fine.

9 He did also not say that there were additional
10 alternatives. Obviously, the wife being one of them.

11 And then third, he said they could delay when they went to
12 Venezuela.

13 **THE COURT:** Well, by a week, not by three weeks.
14 That's the problem.

15 **MR. SPIRO:** So in any event, hopefully he solves it.
16 If not, perhaps we can ask some further questions when the
17 Court feels the need.

18 **MR. APTON:** I suppose this is more for-cause. I mean,
19 he expressed some excitement to be here. And with his other
20 comments about Elon, perhaps --

21 **THE COURT:** Well, that's a cause. I'm looking at
22 hardships.

23 **MR. APTON:** Uh-huh.

24 **THE COURT:** All right, 114. She's a full-time mom
25 with the twins and the other. And she seemed rather uncertain

JURY VOIR DIRE

1 whether she could get help with the kids. And she lives in
2 Pleasanton. So it's not like she's in San Francisco and could
3 get back and pick up the kids.

4 **MR. APTON:** Your Honor, I would accept her hardship
5 request.

6 **THE COURT:** Any objection?

7 **MR. SPIRO:** We don't think it rises to the level of
8 hardship because she indicated, again, hardship is for
9 situations where there's absolutely no possible alternative.
10 It is a very, very high burden. That being said, given where
11 she is in the positioning of this, if the Court, in its
12 discretion, removes her, the Court can exercise its judgment,
13 obviously.

14 **THE COURT:** All right. I will remove her. I mean, we
15 didn't ask, and it seems like she just doesn't have any
16 alternatives that are certain enough. So I'm going to remove
17 No. 114.

18 120 is the guy that works for -- is it Chevron? A lot of
19 planning going on. Needs to be there, everything's happening
20 in the next three weeks. He doesn't have a second in command
21 that has all the information, and so his unit would suffer.

22 **MR. APTON:** Your Honor, I thought he made a
23 compelling, substantiated reason for hardship. I don't see how
24 he's going to be here, mentally, if physically.

25 **MR. SPIRO:** Again, this is an example of plaintiffs

JURY VOIR DIRE

1 sort of embellishing the state of affairs because this juror
2 has a cause challenge that they would like to make. Under no
3 circumstances did Mr. Chen's statements qualify for hardship.
4 Never seen a juror who works at a major corporation who says
5 that they are busy or have things going on at work, I've never
6 seen a juror excused like that for hardship. There was simply
7 no basis to it.

8 His employment is not contingent on it. It's not as if
9 his survival is based on it. He didn't say he would be fired
10 or the entire massive corporation would be shut down. He said
11 he's needed. That's the case of all busy people that work at
12 major corporations. And it is clearly not a hardship.

13 **MR. APTON:** Your Honor, if I could just comment, I'm
14 not embellishing. In response to the opinion of Musk, he says
15 "Don't know." In response to his opinion of Tesla, he says
16 "Good car." So this isn't --

17 **THE COURT:** All right. I've made up my mind. I'm not
18 going to do an excusal. I think it's bad precedent, if
19 somebody works for a major institution, to excuse somebody.
20 There's no personal hardship. It's a company hardship. And
21 I'm not convinced that things will fall apart if he's not
22 there.

23 I understand he says critical three weeks, et cetera,
24 et cetera, et cetera. But it doesn't rise to the level, in my
25 view, so I'm denying hardship.

JURY VOIR DIRE

1 **MR. APTON:** Your Honor, just one point on that. He
2 does have a business trip tomorrow, so I don't know how that
3 gets communicated.

4 **THE COURT:** Well, he's going to have to cancel his
5 business trip.

6 **MR. APTON:** Okay.

7 **THE COURT:** Because, you know, he's got the summons.
8 He -- should not come in here assuming: I'm going to get out
9 of it. When you get summonsed for jury service in Federal
10 Court, you had better assume to the contrary. So if he's made
11 arrangements that are unchangeable, that is his problem.

12 126 says he can serve.

13 144 says she doesn't like driving, but she could do it.
14 And so I don't think she has an excuse.

15 150 says she's okay.

16 And, I believe that's it. So that leaves -- double-check,
17 here are the people still in play -- 3, 4, 6, 32, 36, 39, 40,
18 45, 46, 50, 55, 57, 58 -- 60 I guess we're still going to have
19 come in, right? Did we say? So 60, we're still, for now,
20 bringing her in.

21 65, 67 --

22 **MR. APTON:** Your Honor, 65 is not --

23 **THE COURT:** Oh, not here. That's right. Sorry. 67,
24 68, 73, 74, 79, 81 for now. 83, 89, 97, 103, 104, 110, 113 for
25 now --

JURY VOIR DIRE

1 **MR. APTON:** Your Honor, is 101 still in?

2 **THE COURT:** 101 is not. I excused her. So 113 for
3 now. 118, 120, 124, 126, 127 --

4 **MR. APTON:** Your Honor, 127 and -28 are out. They
5 didn't appear today.

6 **THE COURT:** Oh, they didn't appear. Okay. 127, 128,
7 got it.

8 131, 144, 150, 155, 157, 168, 169, 175, 178, 186, 190, 192
9 and 196. Are all of you aligned?

10 **MR. SPIRO:** One thing that will take at least some of
11 the burden off the Court is 60 is one of the four that we
12 agreed to move to the back. Both sides agreed.

13 **THE COURT:** Yeah.

14 **MR. SPIRO:** So the jurors come up several times, I
15 think I'd make the Court aware of that.

16 **THE COURT:** So let me make that a little circle. So
17 the four jurors that we're going to put to the back are 60,
18 126, 175, and 196.

19 **MR. SPIRO:** Yes, Your Honor.

20 **MR. APTON:** Your Honor, you said we put them to the
21 back. But if I understood your instructions earlier, they're
22 not going out of order. We're just --

23 **THE COURT:** No, those are going out of order, because
24 you all agreed. Those are the four. The ones that each of you
25 identified as you wanted to go to the back but you couldn't

JURY VOIR DIRE

1 agree, I'm going to take some of those in one-on-one voir dire
2 but not move them out of order.

3 **MR. APTON:** Understood. Thank you.

4 **THE COURT:** Because there was no agreement on them.

5 **MR. APTON:** Understood. And Your Honor, 112 is in.
6 Correct?

7 **THE COURT:** 112 is in, yep.

8 **MR. APTON:** Okay.

9 **THE COURT:** So, when we come back, I don't know -- has
10 a half hour run? I think it has.

11 **THE COURTROOM DEPUTY:** Just about.

12 **THE COURT:** Okay. Why don't we start bringing in the
13 first one, be No. 40.

14 **MR. APTON:** Your Honor, is it possible to take a quick
15 two-minute recess?

16 **THE COURT:** Well, I could play hard-nosed, but I'm
17 going to be humane about this and say yes. Let's take a quick
18 ten-minute break. I don't want to take too long, because then
19 the other jurors are waiting.

20 **MR. APTON:** Thank you.

21 **THE COURT:** Take a quick break.

22 **THE COURTROOM DEPUTY:** Court is in recess.

23 (Recess taken from 11:44 a.m. to 11:55 a.m.)

24 (The following proceedings were held outside of the
25 presence of the Jury Venire)

JURY VOIR DIRE

1 **THE COURT:** Have a seat, everyone.

2 Hopefully they're out there. Vicky, if you could just
3 tell all of them, just hang out there, we're going to bring
4 them in one at a time, be patient, appreciate it. Hopefully it
5 won't take too long.

6 That's right, start with No. 40.

7 **THE COURTROOM DEPUTY:** Okay.

8 (Prospective Juror enters the courtroom)

9 **THE COURT:** Okay, Ms. Harris?

10 **PROSPECTIVE JUROR HARRIS:** Good morning.

11 **THE COURT:** Good morning. So, what we're doing is
12 we're asking some people to clarify some of the things they
13 have stated here. And we thought we would take some comments
14 directly instead of as a group.

15 **PROSPECTIVE JUROR HARRIS:** Okay.

16 **THE COURT:** And so we had some questions for you. You
17 had a -- the question was asked about your views of Tesla and
18 of Mr. Musk. And you said something to the effect "I think he
19 is not a very likeable person."

20 **PROSPECTIVE JUROR HARRIS:** Correct.

21 **THE COURT:** Although you think the Teslas are
22 nice-looking cars, and too expensive.

23 **PROSPECTIVE JUROR HARRIS:** Exactly.

24 **THE COURT:** Maybe -- could you explain what you mean
25 when you said you think he's not a likeable -- very likeable

JURY VOIR DIRE

1 person?

2 **PROSPECTIVE JUROR HARRIS:** Well, basically from
3 everything I've ever heard -- don't know the man personally --
4 he seems to be a bit arrogant and narcissistic. And that's
5 just how he comes off in interviews. Not saying that is how he
6 is, but the particular interviews, that's how he seems to come
7 off.

8 **THE COURT:** Um-hmm. And are these are interviews that
9 -- just not in the recent couple of months, like -- was it
10 mainly from the last couple of months, like what's happened at
11 Twitter? Or was it from long before, nor --

12 **PROSPECTIVE JUROR HARRIS:** I'll say the majority of it
13 is Twitter. you know, he's not really a person I keep up with,
14 so yeah, basically that. I mean, I work right down the street
15 from Twitter, so that was something we were kind of keeping an
16 eye on.

17 **THE COURT:** Okay. All right. And prior to the
18 Twitter stuff that was happening, did you have any strong views
19 about him?

20 **PROSPECTIVE JUROR HARRIS:** No, no. No reason to.

21 **THE COURT:** All right. I'm going to give the
22 attorneys a chance to ask some followup, but let me ask you a
23 question.

24 As you know, this case doesn't involve Twitter stock.

25 **PROSPECTIVE JUROR HARRIS:** Correct.

JURY VOIR DIRE

1 **THE COURT:** It doesn't involve tweets that were made
2 in his capacity as -- with respect to Tesla. And you said you
3 indicated that you thought you could still be a fair and
4 impartial juror, even though you had some views.

5 Are you convinced that you could follow the instructions
6 of this Court, listen to only the evidence here that comes out
7 in the courtroom, and render a fair and impartial verdict?

8 **PROSPECTIVE JUROR HARRIS:** Oh, without a doubt. I
9 mean, a lot of people aren't necessarily likeable people, but
10 that doesn't mean that you should judge them on that. I mean,
11 sometimes I don't like my husband.

12 (Laughter)

13 **THE COURT:** But you judge him fairly, right?

14 **PROSPECTIVE JUROR HARRIS:** Right. Exactly. Exactly.

15 **THE COURT:** There you go. Thank you.

16 **PROSPECTIVE JUROR HARRIS:** You're welcome.

17 **THE COURT:** All right. Followup questions, first from
18 the plaintiff, then defendant?

19 **MR. APTON:** Ms. Harris, thank you for coming in today.
20 I don't have any questions. Thank you.

21 **THE COURT:** All right. Mr. Spiro.

22 **MR. SPIRO:** Yeah. And thank you for being so candid
23 with us, Ms. Harris.

24 Essentially, the point of this is that, you know, as His
25 Honor said, how important the jury system is and how important

JURY VOIR DIRE

1 it is to get this right. Right?

2 **PROSPECTIVE JUROR HARRIS:** Uh-huh.

3 **MR. SPIRO:** That's really where this comes from. And
4 so we have to ask jurors to be brutally honest with us.

5 You know, some people would say that if you have a view
6 towards somebody and you think that they are, you know,
7 narcissistic, it's a strong view and it's a negative view which
8 you're more entitled to have. That what ends up happening is
9 the juror sways a little, right? Before the person even
10 testifies, before the trial starts, they're a littler closer to
11 the other side. All things equal. Right?

12 **PROSPECTIVE JUROR HARRIS:** Uh-huh.

13 **MR. SPIRO:** There is a sway. Right? So you could be
14 a very fair person, you could be a great juror. But it could
15 be if you have a strong feeling, if you're working down from
16 Twitter headquarters and you see layoffs, whether it's his
17 fault or not or his doing or not, the combination of these
18 factors causes you to sway, essentially. And what it would
19 just mean is even a fair person, it wouldn't be the right case
20 for them, because of that. That's really what we're getting
21 at.

22 **PROSPECTIVE JUROR HARRIS:** I understand.

23 **MR. SPIRO:** So what I have to ask is I represent
24 Mr. Musk and all the other folks and Tesla, and, I have to sort
25 of ask: Can you be sure, can you give us a full commitment

JURY VOIR DIRE

1 that that view wouldn't in any way, consciously, implicitly,
2 subconsciously, ooze in at all to you, as the case starts?

3 **PROSPECTIVE JUROR HARRIS:** I would assume -- and I'm
4 just going to tell you the type of person that I am. I truly
5 believe that you can't judge a person until you've walked a
6 mile in their shoes. Now, I can say what I have seen and what
7 I have projected him to be. But until I really hear any facts,
8 I can't make a judgment. On paper, it's telling me what I've
9 seen. It has nothing to do with this case.

10 I mean, does that make any sense to you?

11 **MR. SPIRO:** It makes a ton of sense.

12 **PROSPECTIVE JUROR HARRIS:** Okay.

13 **MR. SPIRO:** I very appreciate your answers and candor.
14 I don't have any further questions.

15 **PROSPECTIVE JUROR HARRIS:** Okay.

16 **THE COURT:** Great. All right. Thank you, Ms. Harris.
17 Appreciate it.

18 **PROSPECTIVE JUROR HARRIS:** You're welcome.

19 **THE COURT:** You probably want to take -- this is going
20 to take us probably another 25, 30 minutes before we get
21 through the others, so if you want --

22 **PROSPECTIVE JUROR HARRIS:** So I can go back upstairs
23 and eat now.

24 **THE COURT:** If you want to get something to eat, this
25 is your chance. We will see you here probably in about a half

JURY VOIR DIRE

1 an hour. Thank you.

2 Vicky, if you could get No. 50.

3 (Prospective Juror leaves the courtroom, and Prospective
4 Juror enters the courtroom)

5 **THE COURTROOM DEPUTY:** Okay, No. 50 is here.

6 **THE COURT:** Okay, you can sit anywhere. Have you
7 found out anything more about the jury pay situation?

8 **PROSPECTIVE JUROR CAVENDER:** Yes, sir, I did. I
9 called my manager. Basically they do cover jury pay, but it
10 would be at a smaller percentage than what I usually work. In
11 other words, I'm at 60-percent employee position, working
12 part-time. So that's what they would pay me. But I usually
13 work 40 to 60 hours a week over my percentage.

14 **THE COURT:** Hm. They don't pay you that extra?

15 **PROSPECTIVE JUROR CAVENDER:** They do not pay the
16 extra. And my manager also asked me to plead a case that they
17 are very busy, ICU, short-staffed, and she really needs me to
18 work.

19 **THE COURT:** Let me ask, since you work night shift,
20 would you be able to continue just working your regular shift?
21 I know it's almost like doing double-time, but then come here
22 and serve as a juror?

23 **PROSPECTIVE JUROR CAVENDER:** Well, I have considered
24 that. I mean I work 7p to 7a, that's 12 hours through the
25 night, and then I would be coming to this until 2:00. So I can

JURY VOIR DIRE

1 say that I can try, but I can't guarantee that I would stay
2 awake the whole time, or be as attentive as --

3 **THE COURT:** So you work a 12-hour shift.

4 **PROSPECTIVE JUROR CAVENDER:** Yes, sir. Sometimes I
5 work 16 hours, if I go in at 3:00 in the afternoon and work
6 through the night.

7 **THE COURT:** And how many days a week do you work that
8 12-hour shift?

9 **PROSPECTIVE JUROR CAVENDER:** Usually four per week.
10 Sometimes five.

11 **THE COURT:** All right. Let me ask you a question
12 about some other things that you said.

13 As to Mr. Musk, who's obviously, you know, one of the
14 parties here, you said you had mixed feelings; seems like he is
15 a bit of a mercenary personality. Which can be sort of good or
16 bad.

17 **PROSPECTIVE JUROR CAVENDER:** Right.

18 **THE COURT:** Can you elaborate what you mean when you
19 say he is kind of a mercenary personality?

20 **PROSPECTIVE JUROR CAVENDER:** Well, I can say that I
21 don't know Mr. Musk personally, of course. What I get is from
22 the news and what other people say and everything.

23 I just see him as a younger person that's done pretty well
24 for himself, in many ways. He seems to kind of be a strong
25 personality, and do what he wants. And like I said, that can

JURY VOIR DIRE

1 work out for good or bad for someone, individually and for
2 society.

3 **THE WITNESS:** And the word "mercenary," can you
4 explain --

5 **PROSPECTIVE JUROR CAVENDER:** I'm just using that to
6 say that he's willing to take a risk, chances, and do things
7 that maybe some other people don't have the gumption to do very
8 well. And that is just a judgment. I don't know that for
9 sure. That's just from what I've seen in the news, et cetera.
10 That's my image of him.

11 **THE COURT:** Okay. And that's fair. Everybody has an
12 image, if you know something.

13 **PROSPECTIVE JUROR CAVENDER:** Correct.

14 **THE COURT:** And that's why we show you the video on
15 implicit bias.

16 **PROSPECTIVE JUROR CAVENDER:** Correct.

17 **THE COURT:** The important question is knowing what you
18 know about what this case is about, which is about some tweets
19 about Tesla stock, is there any reason why you think your image
20 of him would get in the way of you being able to follow my
21 instructions of listening only to the evidence at trial,
22 applying the law as I explain it to the jury, and to deliberate
23 impartially and fairly?

24 **PROSPECTIVE JUROR CAVENDER:** I don't think so. I
25 don't pay close attention to his tweets, whatever, because I

JURY VOIR DIRE

1 don't care for Twitter. But I would see it the same as I do a
2 patient. I just walk in on a patient and I don't know them, I
3 do my job, try to take care of them and be non-judgmental. So
4 I think it is a similar situation.

5 **THE COURT:** And you say you don't think so. Obviously
6 it is hard to predict because you are not there, but are you
7 confident that you could judge his case based on the evidence,
8 and not be affected by earlier images?

9 **PROSPECTIVE JUROR CAVENDER:** Yes, sir.

10 **THE COURT:** All right. So I'll ask the parties if you
11 have any -- first, plaintiff -- any followup?

12 **MR. APTON:** Yes.

13 Mr. Cavender, I understand the work situation. I have a
14 question. Are you able to switch shifts and perhaps pick up
15 extra shifts on Thursday or the weekends? Or is that not a
16 possible?

17 **PROSPECTIVE JUROR CAVENDER:** If I did Thursdays that
18 would be just the one day per week I'd be working, or the
19 weekends. But like I said, I'm financially depending on
20 working extra. I've worked 40 to 60 hours a week for years and
21 years now. So it would be asking a bit to rearrange my
22 schedule that way.

23 **MR. APTON:** Sure.

24 **PROSPECTIVE JUROR CAVENDER:** And I don't know --
25 depending on what the unit need is, I don't know that they

JURY VOIR DIRE

1 would definitely need someone on Thursday as opposed to other
2 days, necessarily. Would not be a guarantee, you can work
3 Thursdays.

4 **MR. APTON:** I understand.

5 I don't have any questions, Your Honor.

6 **THE COURT:** All right.

7 **MR. SPIRO:** I don't have any questions, Your Honor.

8 Thank you.

9 **THE COURT:** All right. Appreciate that, Mr. Cavender.

10 Thank you for coming in.

11 **PROSPECTIVE JUROR CAVENDER:** Yes.

12 **THE COURT:** Vicky, could you ask No. 79 to come in?

13 (Prospective Juror leaves the courtroom, and Prospective
14 Juror enters the courtroom)

15 **THE COURT:** Hi, good morning.

16 **PROSPECTIVE JUROR MCGOWN:**

17 **PROSPECTIVE JUROR MCGOWN:** Good morning.

18 **THE COURT:** Mr. McGown?

19 **PROSPECTIVE JUROR MCGOWN:** Yes.

20 **THE COURT:** We are asking people to come in because
21 the people -- we want to explore some statements in your
22 questions and comments. And so one of the things we ask is
23 what people's reactions were or views are of Tesla and of
24 Mr. Musk. And you had quite a bit to say.

25 Sounded like you generally have a positive view of the

JURY VOIR DIRE

1 car. And that your views of Mr. Musk, a lot of it kind of is
2 based on what's happened with Twitter, sounds like?

3 **PROSPECTIVE JUROR MCGOWN:** Yeah, I don't -- yeah,
4 basically I didn't really even really know his name, really,
5 until fairly recently.

6 **THE COURT:** Hm. So you weren't --

7 **PROSPECTIVE JUROR MCGOWN:** Or paid attention, really.

8 **THE COURT:** So you didn't have -- before the recent
9 months, you didn't really have much of an impression of him.

10 **PROSPECTIVE JUROR MCGOWN:** Exactly.

11 **THE COURT:** All right. What's -- in terms of what's
12 happening at Twitter, if you were to summarize your view of him
13 from what you have now heard, do you have any views, one way or
14 the other, of Mr. Musk?

15 **PROSPECTIVE JUROR MCGOWN:** Not -- not really, not
16 really, no.

17 **THE COURT:** Do you have any strong feelings about him,
18 positive or negative?

19 **PROSPECTIVE JUROR MCGOWN:** Not that I really have
20 given a lot of thought about. Again, other than stuff that's
21 come out in the news and so forth. But it -- it doesn't really
22 affect me, so I didn't really put a lot of thought into it.

23 **THE COURT:** Okay.

24 **PROSPECTIVE JUROR MCGOWN:** Other than, you know, just
25 -- was a slight concern about, like I mentioned in there about

JURY VOIR DIRE

1 what he was doing with allowing certain groups to talk on
2 Twitter again, to have access to Twitter again, that might have
3 been a little irresponsible, but again, that's his right.

4 **THE COURT:** Okay. Does that action that's happened at
5 Twitter or anything else about your views of Mr. Musk prevent
6 you from following my instructions that, as a juror, if you are
7 seated, you have to base everything on the evidence you hear
8 here, the laws as I instruct it, and that you need to maintain
9 -- and to be fair and impartial in judging the evidence? Could
10 you do that?

11 **PROSPECTIVE JUROR MCGOWN:** Oh, absolutely.

12 **THE COURT:** Pretty certain about that?

13 **PROSPECTIVE JUROR MCGOWN:** Oh, yeah and, like, as far
14 as Twitter goes as I mentioned as well, I'm not a big Twitter
15 person. I fairly recently started using it just to get some
16 news but other than that it's -- probably spend maybe five
17 minutes on it a day.

18 **THE COURT:** Okay. All right. Thank you. Any
19 followup questions?

20 **MR. APTON:** Yes, Your Honor. So, Mr. McGowan, the
21 events in this case precede this whole Twitter management stuff
22 by years. Are you able to take what you have learned very
23 recently and just completely wall it off from how you are going
24 to see the facts of this case and then assess and apply the
25 judge's instructions carefully and accurately?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR MCGOWN:** Absolutely. Yeah.

2 **MR. APTON:** Okay.

3 **PROSPECTIVE JUROR MCGOWN:** Without a doubt.

4 **MR. APTON:** Thank you, sir.

5 **THE COURT:** All right. Mr. Spiro?

6 **MR. SPIRO:** Good afternoon, thanks for coming in and
7 thanks for your candor. This process as the judge said at the
8 outset is very important so what we are doing is talking to
9 jurors because a person could be fair and be a great juror but
10 if they have, you know, ideas and thoughts that precede the
11 case there is always a risk, right, either consciously or
12 subconsciously that makes its way into the courtroom, right?
13 And I'm sure you know about that. People have biases and they
14 have implicit biases, right? So some of your comments on the
15 questionnaire, right, and you felt comfortable enough to put
16 them down, right --

17 **PROSPECTIVE JUROR MCGOWN:** Uh-huh.

18 **MR. SPIRO:** -- so they were at the forefront of your
19 mind, you know, not a fan of the hate speech and letting folks
20 back on, right? But also you said, you know, that his tweets,
21 you said most of his tweets are ill-informed and he is going
22 for shock.

23 **PROSPECTIVE JUROR MCGOWN:** I said "most"?

24 **MR. SPIRO:** Yeah. But I don't want to quibble on --

25 **PROSPECTIVE JUROR MCGOWN:** I shouldn't have put that

JURY VOIR DIRE

1 because I don't have enough reference to put that. If I did, I
2 did it by accident.

3 **MR. SPIRO:** Understood. That may be what, you know,
4 that's -- not to put you on the hot seat but you know that is
5 what people are talking about when they say "implicit," right?

6 **PROSPECTIVE JUROR MCGOWN:** That is --

7 **MR. SPIRO:** So it may be that a few of them that you
8 saw is that you thought were ill-informed, right, that have
9 some shock value, I noticed you said he seems to be going for
10 shock, right?

11 **PROSPECTIVE JUROR MCGOWN:** Yes.

12 **MR. SPIRO:** And all of a sudden you write "most"
13 because that's how the mind --

14 **PROSPECTIVE JUROR MCGOWN:** I apologize for that.

15 **MR. SPIRO:** No don't apologize, we want absolute --
16 right, this process involves absolute candor and brutal
17 honesty.

18 So this case is about a tweet, right? And a tweet about
19 what he was thinking at the time when he made the tweet.
20 Right? So if a person comes into that case with a view that
21 some of his tweets, even a couple of his tweets are,
22 quote-unquote, ill-informed or, you know, are done for shock
23 value, right?

24 And the case is about that, the concern would be that you
25 would come into the case and you would be swaying even a little

JURY VOIR DIRE

1 bit, right, even 51 percent, 49 percent, that you could sway a
2 little bit implicitly, even and if that's the case it wouldn't
3 be the right case for you.

4 **PROSPECTIVE JUROR MCGOWN:** Right, I understand.

5 **MR. SPIRO:** So that is all we are trying to get at,
6 not putting you on the hot seat. It just strikes me, we talked
7 about how it says "most," again, can you be sure in a matter of
8 this importance?

9 **PROSPECTIVE JUROR MCGOWN:** Absolutely.

10 **MR. SPIRO:** That in no way could that, what these
11 opinions, these things you've seen, seen recently, has no
12 impact on any of your thoughts, subconscious or otherwise, as
13 you --

14 **PROSPECTIVE JUROR MCGOWN:** True. Yeah, I can honestly
15 say that because really I don't know enough about him, like I
16 said, other than that statement, I probably -- I shouldn't have
17 put that, but I was trying to be honest at the time. And I
18 think I did see something on the news where someone said most
19 of his tweets are -- are shock value or ill informed and I
20 think that must have been what I was thinking about at that
21 moment.

22 But when it comes to the trial, I mean it has to be what
23 surrounds this case, that tweet, I shouldn't be -- well, one, I
24 have to go by whatever the judge instructs me to do. But from
25 what I understand, is any input I have has to be around this

JURY VOIR DIRE

1 case, that tweet, and the -- the evidence moved forward on
2 that. That's all I can do.

3 **MR. SPIRO:** And you can give, you can give me your
4 commitment that you can put those thoughts and feelings, leave
5 them at the courthouse --

6 **PROSPECTIVE JUROR MCGOWN:** 100 percent, yeah.

7 **MR. SPIRO:** Thank you very much. Thank you for your
8 candor.

9 **THE COURT:** Thank you Mr. McGowan, appreciate it.

10 **PROSPECTIVE JUROR MCGOWN:** Thank you.

11 **THE COURT:** We'll probably convene in about a half
12 hour or so -- I keep moving it back -- so if you want to get
13 something to eat or something it's on the second floor.

14 **PROSPECTIVE JUROR MCGOWN:** Sure, no problem.

15 **THE COURT:** Thank you.

16 And No. 97, Vicky.

17 **THE COURTROOM DEPUTY:** Yes, Your Honor. Thank you.

18 (Prospective Juror leaves the courtroom, and Prospective
19 Juror enters the courtroom)

20 **THE COURT:** Hi.

21 **PROSPECTIVE JUROR HUI:** Hello.

22 **THE COURT:** Thank you for waiting. We had a couple
23 followup questions. One is, you had some close friend that
24 worked, works at Tesla?

25 **PROSPECTIVE JUROR HUI:** A friend.

JURY VOIR DIRE

1 **THE COURT:** Friend.

2 **PROSPECTIVE JUROR HUI:** Yeah.

3 **THE COURT:** Does that fact, would that prevent you
4 from being a juror who could assess this case neutrally and
5 fairly?

6 **PROSPECTIVE JUROR HUI:** No, it wouldn't affect me.

7 **THE COURT:** Okay you wouldn't be swayed one way or the
8 other by that?

9 **PROSPECTIVE JUROR HUI:** No.

10 **THE COURT:** And then we asked questions about your
11 views of both Tesla and Mr. Musk. And I think, sounds like you
12 like the Tesla, from what you know. But you describe Mr. Musk
13 as being arrogant, unpredictable, irrational at times. So
14 maybe you can elaborate on that. Is that based on stuff that's
15 happened at Twitter or your views, are these long-held views
16 that you had? Or --

17 **PROSPECTIVE JUROR HUI:** Mainly Twitter and also when
18 we had to shelter in place where he still had the Tesla factory
19 open, in operation.

20 **THE COURT:** Okay. Does that knowledge or your
21 perception of him, do you think that would prevent you from
22 being an impartial juror in this case and be able to assess the
23 evidence that you hear in this courtroom and follow the
24 instructions on the law?

25 **PROSPECTIVE JUROR HUI:** No, it wouldn't affect me in

JURY VOIR DIRE

1 that.

2 **THE COURT:** Would not affect you.

3 **PROSPECTIVE JUROR HUI:** No.

4 **THE COURT:** So even though there's some things he's
5 done that you don't approve of, you could give Mr. Musk a fair
6 trial and follow the rules and the instructions here?

7 **PROSPECTIVE JUROR HUI:** Yes.

8 **THE COURT:** And are you confident you can do that?

9 **PROSPECTIVE JUROR HUI:** Yes.

10 **THE COURT:** Okay. Followup questions?

11 **MR. APTON:** Yes. Ms. Hui, so this case is about the
12 tweet that Mr. Musk sent back in 2018. So well before the
13 Twitter management goings-on, well before COVID, or pandemic.
14 So we just want to make sure that the jurors who ultimately do
15 sit on the jury are able to disregard and wall off anything
16 that they might have learned recently, and really judge and
17 assess the facts and the law fairly about what occurred years
18 prior to all that. And so I just want to make sure you are
19 able to do that. Are you able to do that?

20 **PROSPECTIVE JUROR HUI:** Yes.

21 **MR. APTON:** Thank you.

22 **THE COURT:** All right. Mr. Spiro?

23 **MR. SPIRO:** Yes. So, you know, the reason this
24 process is so important and I appreciate you coming in and your
25 candor, is, you know, what we want is to seat a fair and

JURY VOIR DIRE

1 impartial jury. And you strike me as somebody who could sit on
2 many juries and be fair and impartial. But the concern, right,
3 with the comments, and these are pretty strong words,
4 "Arrogant, unpredictable, irrational," and you know, you note
5 the issue with the factory which could have, I take it from
6 your statement, it's a public-safety issue to you?

7 **PROSPECTIVE JUROR HUI:** I'm sorry?

8 **MR. SPIRO:** The issue with him keeping the factory
9 open during the pandemic, was that a public safety concern?
10 Or --

11 **PROSPECTIVE JUROR HUI:** Yeah, more of public safety.

12 **MR. SPIRO:** Yeah, so what we're concerned about or
13 what, you know, we want to get this right. Okay? And so what
14 we're trying to figure out is if a juror is swaying a little
15 bit to either side. Right? Even 51 percent would be too much
16 of a sway, so that when you come in, you know, there's, people
17 have views and there's also implicit, right? Subconscious
18 views that people have. And so if there's somebody that you
19 think is arrogant, unpredictable and irrational at times and
20 there's specific events that you can think of that they have
21 done, you know, it's hard to, at least for some people, to
22 imagine that you could put all of that to the side, and come in
23 and everybody starts dead even, that there's not even a little
24 bit of a sway. And so what I'm asking is how can you -- again
25 you think you can, but, you know, how do you know that you can

JURY VOIR DIRE

1 or how can you give me your commitment that you could. Or do
2 you think that there is something that could trickle in?

3 **PROSPECTIVE JUROR HUI:** Well, the case is based on
4 evidence and this is based on his tweet of the shares of Tesla,
5 taking it private. Yeah, I don't know much about that so, you
6 know, I will be listening to all the evidence and make my
7 judgment based on that.

8 **MR. SPIRO:** And so you can give me a commitment that
9 you can put those things that you have talked about --

10 **PROSPECTIVE JUROR HUI:** Uh-huh.

11 **MR. SPIRO:** -- to the side and look at this case on
12 its (Inaudible) fours, right?

13 **PROSPECTIVE JUROR HUI:** Correct.

14 **MR. SPIRO:** The other thing that I just have to ask
15 you is, you know, the plaintiffs in this case could sort of
16 argue to you certain things that may be consistent with the way
17 you view him, right? They could say, well, don't you think
18 that this was, you know, unpredictable, right? You used the
19 word unpredictable. Given that you already hold that view at
20 some level, you don't think you would be more receptive to an
21 argument of a view that you already held?

22 **PROSPECTIVE JUROR HUI:** Maybe, but, you know, try not
23 to.

24 **MR. SPIRO:** No I get it and I very much appreciate you
25 being brutally honest with us. It is exactly that maybe,

JURY VOIR DIRE

1 right, that makes jurors that can't give sort of unequivocal --
2 understandably, an unequivocal assurance. Just think about it
3 in your own life, you shouldn't be sitting in judgment of
4 people on an issue that you already have a view on, right?
5 That is the same for all of us, me too. So if you have a
6 previous view on that topic, right, and you think maybe it
7 would influence you, maybe it wouldn't, then isn't it the case
8 that you can't, you know, fairly can't give an unequivocal
9 assurance? Because I don't see how you could give an
10 unequivocal assurance since the answer's maybe. Do you
11 understand what I'm saying?

12 **PROSPECTIVE JUROR HUI:** Uh-huh.

13 **MR. SPIRO:** So what is your reaction to that? Don't
14 you think that if maybe the argument that you already believe
15 is presented to you, that you would come in 51/49, maybe a lot
16 more but at least 51/49 against in terms of the way you are
17 leaning?

18 **PROSPECTIVE JUROR HUI:** Possibly, I guess, if you put
19 it that way.

20 **MR. SPIRO:** Okay. Um, then I have no further
21 questions.

22 **THE COURT:** All right, let me ask a followup question.
23 One of the things you will be instructed is that the plaintiff
24 will have the burden of proving certain things in this case.
25 And so you will have to sit and listen to the evidence and

JURY VOIR DIRE

1 there may be evidence on one side, evidence on the other side,
2 you know, sometimes people remember things differently, and
3 there would be competing testimony. That is why we have trials
4 but you will be instructed about, you know, the burden of
5 proof. And the burden of proof's generally, like for instance
6 the plaintiff will have to prove certain things that are more
7 likely true than not. And you will listen to evidence.

8 Do you have some doubt that if it comes to some disputed
9 fact about what Mr. Musk knew or did, that you might not be
10 able to judge that neutrally and fairly and listen only to the
11 evidence here, because you had some views about his prior
12 tweets?

13 **PROSPECTIVE JUROR HUI:** No, I feel that I can just
14 listen to the facts and make the judgment based on that.

15 **THE COURT:** Okay. You think you can.

16 **PROSPECTIVE JUROR HUI:** Yeah.

17 **THE COURT:** Would you say, trying to get a sense --
18 know it's hard to gauge because you haven't heard it yet but
19 are you certain, pretty certain, or probably can do that?
20 Where on the scale of confidence are you?

21 **PROSPECTIVE JUROR HUI:** Pretty certain.

22 **THE COURT:** Pretty certain. Okay. Not absolute but
23 pretty certain. Okay. All right, anything further, counsel.

24 **MR. SPIRO:** No, Your Honor.

25 **MR. APTON:** No, Your Honor.

JURY VOIR DIRE

1 **THE COURT:** All right. Thank you, Ms. Hui. I
2 appreciate it.

3 **PROSPECTIVE JUROR HUI:** Thank you.

4 **THE COURT:** And we're next going to call?

5 **THE COURTROOM DEPUTY:** 101.

6 **THE COURT:** 101 is -- we are not going to call 101.
7 We can excuse 101.

8 **THE COURTROOM DEPUTY:** Okay.

9 **THE COURT:** Skip 101 for now.

10 **THE COURTROOM DEPUTY:** 118?

11 **THE COURT:** 118.

12 (Prospective Juror leaves the courtroom, and Prospective
13 Juror enters the courtroom)

14 **THE COURT:** Good -- it's afternoon now, Mr. Vincent.

15 **PROSPECTIVE JUROR VINCENT:** Yes, it is.

16 **THE COURT:** Appreciate you coming in. We are asking
17 some followup questions of folks based on the questionnaire.
18 One of them is sort of the comments on either Tesla or Mr. Musk
19 and you commented "Nice cars" but you don't like Mr. Musk and
20 you wouldn't buy a Tesla. Maybe you can tell us a little bit
21 more about your views, you say you don't like him, maybe you
22 can tell us why and how strongly you feel about it.

23 **PROSPECTIVE JUROR VINCENT:** He's arrogant as I see it.
24 I know he is a genius. But just his approach over the last few
25 years. I mean from the free speech stuff with Twitter, free

JURY VOIR DIRE

1 speech is something that's supposed to protect us from the
2 federal government, not something to say that everybody can say
3 whatever they want at any time. So that bothers me. And I
4 think since the Twitter thing started that's made me have more
5 negative feelings toward him. Before that I think it was more
6 just he just seemed like another arrogant rich guy. But --

7 **THE COURT:** Okay. Do you feel that -- sounds like
8 your views of him as a result of Twitter are pretty strong?

9 **PROSPECTIVE JUROR VINCENT:** Yes.

10 **THE COURT:** Would that prevent you, because of the
11 critical question -- I know you answered no on the
12 questionnaire but I want to make sure, obviously it is pretty
13 important that people be able to set aside their biases and
14 preconceptions and listen only to the evidence that comes out
15 at trial and not some other image they may have had before, and
16 follow the instructions, which I will give. And then, render
17 an impartial verdict based only on the evidence here. Do you
18 think, notwithstanding your strong views about Mr. Musk, you
19 could do that?

20 **PROSPECTIVE JUROR VINCENT:** Yes. They're completely
21 separate. I mean, the law is law, and what I think of somebody
22 is, it's separate. I don't know if it's worth any personal
23 examples of where I think I've done that in the past, or not.
24 But...

25 **THE COURT:** Well, that might be kind of interesting.

JURY VOIR DIRE

1 Is there an example that demonstrates that?

2 **PROSPECTIVE JUROR VINCENT:** It's not anything close to
3 this level but just, I used to be -- worked with a guy, he and
4 I were friend then we got to where we weren't friends, then he
5 became the boss and he was trying to fire me, he made stuff up
6 to try to fire me. Didn't work. Finally he bored me, and I
7 left. Years later, I went to work for the union, and I was his
8 representative, and he called me and I helped him. Didn't have
9 any hesitation, didn't want revenge. And even after I left the
10 union he used to call me for advice. And I still thought it
11 was rather interesting but I didn't hold back. So, I can
12 separate.

13 **THE COURT:** And so you fully believe in principle, --

14 **PROSPECTIVE JUROR VINCENT:** Yes.

15 **THE COURT:** -- in following the rules. Thank you.
16 Any followup?

17 **MR. APTON:** Yes. Mr. Vincent, so I understand that
18 some of your feelings toward Mr. Musk relate to how he has
19 managed Twitter and certain speech that's been on the platform
20 as of late. This case in a way relates to speech made by Elon
21 Musk, and whether a statement was false, knowingly false at the
22 time he made it.

23 And so your preconceived notions, your understanding of
24 how Musk governs speech of others and his speech, would that
25 somehow taint your ability or prevent you from rendering a fair

JURY VOIR DIRE

1 judgment as to what he did four-and-a-half years ago?

2 **PROSPECTIVE JUROR VINCENT:** No. Because we're going
3 to be talking about the law, Judge Chen is going to explain the
4 law. And I think it's in black and white what Mr. Musk said or
5 didn't say. So that's not up for debate. It's just, was the
6 law broken? Or -- I don't know if there's something beyond the
7 law being broken but, were things done wrong that the Court
8 says shouldn't have been done? Did he do it or didn't he do
9 it? And that's two different things.

10 **MR. APTON:** Sure. Thank you. So if the principle
11 that you are to follow is to hear the facts and apply the law
12 fairly, you will do that. Is that correct?

13 **PROSPECTIVE JUROR VINCENT:** Yes.

14 **MR. APTON:** Thank you, sir.

15 **PROSPECTIVE JUROR VINCENT:** You are welcome.

16 **THE COURT:** All right. Mr. Spiro?

17 **MR. SPIRO:** Thanks.

18 And thank you for coming in and thank you for your
19 honesty. The reason we are doing this is, of course it is a
20 very important process, right, and if there is not a full jury
21 that is fair and impartial it creates obviously major problems.
22 So I appreciate you coming in and your honesty. And it doesn't
23 sort of surprise me the story that you tell. You seem like a
24 thoughtful person where you were able to see somebody from your
25 past and move on and do right by them. Mr. Musk isn't sort of

JURY VOIR DIRE

1 going to get that opportunity to sort of interact with you,
2 right?

3 **PROSPECTIVE JUROR VINCENT:** (Nods head)

4 **MR. SPIRO:** And so the concern would be that if you go
5 into sitting on judgment of somebody and it's somebody you
6 don't like, that all things equal, right, whether it's
7 conscious or subconscious, you sway even a little bit. Right?
8 You, you don't like the person, and you've -- I could see even
9 the way you were reacting to the questions, you -- you want --
10 you want -- you are a fair person and you want to say that you
11 just don't like him, but the not liking is pretty strong,
12 right?

13 And so what we have to ask jurors is you could probably be
14 a fair juror on, like, every other case in the building, right,
15 a perfect juror. But it may be that, you know, given what's at
16 stake, that it's not the perfect case for you, right? Because
17 of all of the cases and all the people, if you already start
18 off not liking -- strongly not liking the person accused, you
19 know, it's hard to give a complete assurance, subconscious,
20 conscious, that you don't sway even a little.

21 Do you understand what I'm sort of getting at?

22 **PROSPECTIVE JUROR VINCENT:** I do.

23 **MR. SPIRO:** And do you have a reaction to that?

24 **PROSPECTIVE JUROR VINCENT:** Um, I agree with what
25 you're saying, that, you know, anything in life, that can come

JURY VOIR DIRE

1 up. Kind of like the video we watched in the jury room
2 about -- I'm so bad with names -- unconscious bias, is that the
3 right terminology?

4 **MR. SPIRO:** Yeah.

5 **PROSPECTIVE JUROR VINCENT:** So, yeah, that -- I can
6 see that. See your point.

7 **MR. SPIRO:** Right, yeah, and this is not just, you
8 know, a possibility that you, you know --

9 **PROSPECTIVE JUROR VINCENT:** Right.

10 **MR. SPIRO:** That something happened when you were a
11 kid and it may still impact you. This is something that you've
12 thought about, you have read news about, you have opinions
13 about, you probably talked to other people about. You know,
14 it's a lot. Right? And so it strikes me that somebody that
15 holds views that strongly about the person accused in this
16 case, that it probably isn't the right case for you.

17 I mean --

18 **THE COURT:** Are you asking a question?

19 **MR. SPIRO:** Well, I'm asking for a reaction that, um,
20 you know -- you know, it's not -- as you put it before, you
21 know, it's like black and white, did he say it, did he not,
22 does it break the law? But this case isn't going to be black
23 and white. It's going to be a lot about do you believe him, do
24 you trust him, what's in his mind, why did he do certain
25 things. So if you come in with that view and that implicit

JURY VOIR DIRE

1 bias we were talking about, you know -- you know, I assume you
2 can't be sure that that doesn't impact the way you evaluate his
3 testimony and the facts and circumstances around it.

4 I mean, can you be sure that that's not going to happen?

5 **PROSPECTIVE JUROR VINCENT:** I can't be sure of
6 anything. Do I feel that I could listen to the law and follow
7 it and come to a fair decision? Yes.

8 **MR. SPIRO:** Okay. And -- and you think, if -- if --
9 you know, the plaintiffs may argue specifically something that
10 comports with your previously held view, right? You would be
11 what some people say is a receptive audience to a view you
12 already hold. So do you think that that, you know -- I think
13 all people, if you're being told something you already agree
14 with, you don't think that you would come in at least
15 51 percent, 49 percent swaying at all to one side?

16 Or you don't know?

17 **PROSPECTIVE JUROR VINCENT:** I don't know.

18 **THE COURT:** I think the question is how certain are
19 you that you can be fair and objective, given past -- I mean,
20 as you learned from the video and, you know, from life,
21 everybody has preconceived views of everything. Everything you
22 see, just by sight, that was one of the lessons of implicit
23 bias, you see an animal, you immediately think are they
24 dangerous or not dangerous. You see somebody and you have
25 certain impressions and you have -- we all come to that. And

JURY VOIR DIRE

1 our struggle is to try to find people who can confidently say:
2 Even if I have some predisposed views in the past about
3 somebody or something -- it might be about a corporation, might
4 be about anything -- can I put that aside with enough
5 confidence that the Court feels that you've got the confidence
6 to be able to do that. So it's kind of a question of degree.
7 I think you're saying, you know, can't be sure of anything,
8 something like that. And that's probably true of everything.

9 **PROSPECTIVE JUROR VINCENT:** (Nods head)

10 **THE COURT:** But how certain can you be that you would
11 judge the evidence, really, based on what you hear and not give
12 it some special credence, for instance, because you already had
13 some views about Mr. Musk or about corporations or about
14 whatever. Do you think you could -- how confident are you that
15 you could do that?

16 **PROSPECTIVE JUROR VINCENT:** I'm extremely confident
17 because I'm not going to make it personal, what we're doing
18 here. Going back to my story a moment ago, this guy spent a
19 lot of time trying to fire me, take away my livelihood,
20 including have his assistant make things up. And it was, like,
21 um -- and that guy, it was -- I had no hesitation to help the
22 guy out.

23 Elon Musk has not tried to harm me in any way. And I -- I
24 feel extremely confident that I could pass fair judgment. But
25 I completely understand where you are coming from. I -- I -- I

JURY VOIR DIRE

1 feel like I'm fortunate in that sense, that I can, as a human
2 being, do that.

3 **MR. SPIRO:** I guess the difference between the story,
4 the real-life experience you keep coming back to where you were
5 still willing to help somebody, right --

6 **PROSPECTIVE JUROR VINCENT:** Uh-huh.

7 **MR. SPIRO:** -- if you saw Mr. Musk fall on the ground,
8 you would pick him up. If he was thirsty, you would give him a
9 glass of water. Right? In this case you are going to be
10 asked, right, in high level, right, may say something and some
11 other witness something different. So it's not just the spirit
12 to help, which is an honorable one --

13 **MR. APTON:** Your Honor --

14 **MR. SPIRO:** Is not -- isn't, obviously, complete
15 apples to apples. So what I have to ask is, you know, can you
16 commit -- can you commit a hundred -- again, you know, nothing
17 is for certain, but can you commit that you won't look at two
18 witnesses at all and prejudge them by one -- by not coming in
19 liking one of them? Right? Because a lot of people would say
20 their experience would cause that, right? It's not exactly the
21 same as helping. So I just wanted to make that distinction and
22 sort of just ask for your reaction to that.

23 **MR. APTON:** Your Honor, can we pause this and
24 approach, real quick?

25 **THE COURT:** No, I want to conclude this. Let's move

JURY VOIR DIRE

1 on. And I'd like to just answer that question. If you had two
2 witnesses and one of them is Mr. Musk and somebody else says
3 something different, given your views of Mr. Musk in the past,
4 could you weigh that testimony neutrally based on what you hear
5 on the stand and what you see on stand as opposed to something
6 you've seen earlier?

7 **PROSPECTIVE JUROR VINCENT:** I'll base this on, I
8 haven't seen that Elon Musk lies. I've seen him do things I
9 don't agree with, like I said, about the way he's running
10 Twitter and free speech. I haven't seen him -- maybe I'm wrong
11 but I haven't seen in the press that he lies. So, based on
12 that, I believe I could weigh the two -- testimony from the two
13 different people equally.

14 **THE COURT:** All right. So it's not just -- there may
15 be an issue about truth or not -- you know, somebody believing
16 one witness over another, but there may be also questions about
17 what was in his mind, for instance, when he did certain things.

18 And if you think that he acts impulsively, generally, or
19 arrogantly or something like that, would you be able to make
20 some judgment just based on the evidence that comes out in this
21 courtroom and not anything else you've seen or heard in the
22 past?

23 **PROSPECTIVE JUROR VINCENT:** I could do that.

24 **THE COURT:** With confidence?

25 **PROSPECTIVE JUROR VINCENT:** Yes.

JURY VOIR DIRE

1 **THE COURT:** All right. Thank you, Mr. Vincent. I
2 appreciate it.

3 **PROSPECTIVE JUROR VINCENT:** You're welcome.

4 **MR. APTON:** Your Honor, before we bring in the next
5 witness, can I make a quick statement?

6 **PROSPECTIVE JUROR VINCENT:** Am I out of here?

7 **THE COURT:** Yeah. Yeah. We're going to come back in
8 about 15 minutes, so if you want to try to grab something real
9 quick or --

10 **PROSPECTIVE JUROR VINCENT:** Okay, thank you.

11 (Prospective Juror leaves the courtroom)

12 **THE COURT:** And then, Vicky, we'll pause for a second,
13 but the next one will be No. 124.

14 All right, Mr. Apton.

15 **MR. APTON:** Thank you, Your Honor. Your Honor, the
16 purpose of this portion of voir dire was to avoid tainting the
17 rest of the pool, according to Mr. Spiro. What I've seen so
18 far is badgering, repeated questions --

19 **THE COURT:** Well, all right.

20 **MR. APTON:** -- of the witness.

21 **THE COURT:** I've been tempted a couple of times to
22 intervene. We're not here to give speeches. I understand you
23 want to get certain concepts through, but I'm going to put a
24 limit. I don't want long speeches. I understand you're trying
25 to make your point, but at some point you're passing the line.

JURY VOIR DIRE

1 So I'm just warning you. Let's move. Let's move. I
2 don't need to hear anything else. Let's move.

3 This is No. 120? No. 124. Sorry.

4 (Off-the-Record discussion between the Court and the
5 Courtroom Deputy)

6 **THE COURTROOM DEPUTY:** Judge, No. 31?

7 **THE COURT:** It's 124 --

8 **THE COURTROOM DEPUTY:** No, no. Are you excusing No.
9 31? She has a plane ticket for today, the one whose brother
10 passed away on Sunday.

11 **THE COURT:** Yes. That's the one who's got a -- yes.
12 You can excuse her.

13 **THE COURTROOM DEPUTY:** We're excusing, correct?

14 **THE COURT:** You can excuse her.

15 **THE COURTROOM DEPUTY:** Thank you.

16 **MR. PORRITT:** That's 31.

17 **THE COURT:** Wait, is that the one? She says that's
18 the one with the plane ticket?

19 **THE COURTROOM DEPUTY:** She's the one whose brother
20 passed away. She --

21 **THE COURT:** It's not 131, it's --

22 **MR. PORRITT:** 31.

23 **THE COURTROOM DEPUTY:** No, 31.

24 **THE COURT:** Oh, 31. Yeah.

25 **THE COURTROOM DEPUTY:** Yes.

JURY VOIR DIRE

1 **THE COURT:** All right. Everybody agrees we've
2 already -- I've already ruled on her so she should go catch a
3 plane.

4 **THE COURTROOM DEPUTY:** Thank you.

5 **THE COURT:** Yeah.

6 (Prospective Juror enters the courtroom)

7 **THE COURT:** Okay. Good afternoon, Mrs. Davidson.

8 **PROSPECTIVE JUROR DAVIDSON:** Hi.

9 **THE COURT:** Thank you for your patience, appreciate
10 it. We just had some follow-up questions about some of your
11 answers, and we're taking that from various folks. In
12 particular, your view about Tesla and Mr. Musk, obviously,
13 since this case concerns those matters.

14 You said the car is a good car but overpriced. And then
15 with respect to Mr. Musk, you simply said "He sucks."

16 **PROSPECTIVE JUROR DAVIDSON:** Yeah.

17 **THE COURT:** So I have to ask you to elaborate. What
18 do you mean by that?

19 **PROSPECTIVE JUROR DAVIDSON:** Yeah. I mean, just,
20 obviously, everything that's been in the media recently, I
21 think he is a little off his rocker on a personal level. With
22 respect to laws or any laws he might have broken, I wouldn't
23 know, but not so much a fan.

24 **THE COURT:** And are you speaking mainly of --
25 primarily of Tesla -- I mean, of Twitter? His --

JURY VOIR DIRE

1 **PROSPECTIVE JUROR DAVIDSON:** No. I mean, just I think
2 his public behavior and his ego.

3 **THE COURT:** And you say you think he's broken the law?

4 **PROSPECTIVE JUROR DAVIDSON:** No, no, no. I said I do
5 not know if he has.

6 **THE COURT:** Oh, oh, oh.

7 **PROSPECTIVE JUROR DAVIDSON:** But just on a personal
8 level, I think he's -- yeah.

9 **THE COURT:** And does that stem from public statements
10 he's made or things he's done with respect to Twitter or Tesla
11 or other things?

12 **PROSPECTIVE JUROR DAVIDSON:** Mostly everything.

13 **THE COURT:** Everything?

14 **PROSPECTIVE JUROR DAVIDSON:** Yeah. I mean, just
15 everything you see in the media, I think he's -- his persona
16 has changed over the last few years.

17 **THE COURT:** Okay. So the change in the last few
18 years, that you think?

19 **PROSPECTIVE JUROR DAVIDSON:** Yeah.

20 **THE COURT:** Okay. Would you say that your views of
21 him are strong?

22 **PROSPECTIVE JUROR DAVIDSON:** Um, I don't know about
23 that. I mean, I have formed opinions of him personally that
24 they could be changed if there was different facts.

25 **THE COURT:** Okay. Well, if you are seated in a -- as

JURY VOIR DIRE

1 a juror in this case, you would be instructed that you would
2 have to kind of start with a clean slate and you have to listen
3 to the evidence, the testimony, look at the documents, and --
4 and view only the evidence in this case, and then follow the
5 law as I'm going to instruct the jury about what the law and the
6 rules are.

7 Do you think you -- notwithstanding your negative views
8 about Mr. Musk, and since he's a party in this case and a
9 possibility he may end up testifying, others will testify, that
10 you could judge the evidence fairly and base it solely on what
11 happens in this courtroom?

12 **PROSPECTIVE JUROR DAVIDSON:** I do.

13 **THE COURT:** And how confident are you about that?

14 **PROSPECTIVE JUROR DAVIDSON:** I mean, I do believe
15 everyone has their own inherent biases, and I'm aware of those.
16 So, I tend to think more logically about things, so I would
17 obviously do my best.

18 **THE COURT:** And everybody has inherent bias and I
19 appreciate your recognition of that. And you may have an
20 inherent bias as we sit here right now about Mr. Musk, right?

21 **PROSPECTIVE JUROR DAVIDSON:** Uh-huh.

22 **THE COURT:** What is your strategy for kind of putting
23 that aside and being a juror if you were chosen as a juror in
24 this case?

25 **PROSPECTIVE JUROR DAVIDSON:** It's really solely based

JURY VOIR DIRE

1 on the facts presented, right? Like you either did or didn't
2 break the law, so it should be hopefully pretty crystal clear
3 from what these lawyers are presenting.

4 **THE COURT:** Well, the evidence will come out and there
5 may be conflicting evidence and it may not be crystal clear.
6 Maybe there may be some gray areas about either what was done,
7 why it was done, what was in his mind and others' minds, so it
8 may be a little more subtle. So if it's -- if you just pretend
9 for a moment that there's going to be some difficult decisions
10 you'll have to figure out, so difficult things you'll have to
11 resolve, because there's going to be a fair amount of evidence,
12 do you think you could do that if it's not just a
13 black-and-white situation?

14 **PROSPECTIVE JUROR DAVIDSON:** I think so.

15 **THE COURT:** And how confident are you about that?

16 **PROSPECTIVE JUROR DAVIDSON:** Pretty confident.

17 **THE COURT:** Okay. So pretty confident, not certain
18 but pretty confident?

19 **PROSPECTIVE JUROR DAVIDSON:** Yeah. I mean, again, I
20 think we all have our own biases but I'm a firm believer of
21 innocent until proven guilty.

22 **THE COURT:** Okay. All right. Follow-up questions?

23 **MR. APTON:** Yes. Ms. Davidson, hi. I understand
24 that -- well, I remember, you just referred to Mr. Musk as
25 being off his rocker lately. He's going to testify in this

JURY VOIR DIRE

1 case, he's going to give his opinions.

2 Are you going to be able to accept the testimony he gives
3 as evidence and weigh it separate and apart from him
4 potentially being off his rocker as of late?

5 **PROSPECTIVE JUROR DAVIDSON:** Um, yeah.

6 **MR. APTON:** So on your questionnaire you said you
7 would be able to apply the law, receive the facts, open mind,
8 act impartially. Are you willing to do that going forward?

9 **PROSPECTIVE JUROR DAVIDSON:** Yeah.

10 **MR. APTON:** And you're sure?

11 **PROSPECTIVE JUROR DAVIDSON:** Yes.

12 **MR. APTON:** Thank you.

13 **MR. SPIRO:** May I, Your Honor?

14 **THE COURT:** Yes.

15 **MR. SPIRO:** You know, what we are trying to figure out
16 here -- and I appreciate your honesty -- is, you know, not
17 whether -- you seem like a fair person, you can be a fair
18 person -- but is this the right case and can you be fair in
19 this specific case, right? And we're talking about -- his
20 Honor was talking about implicit bias and things, but this is
21 something that's not just, you know, implicit like you might
22 have some reaction to something. This is somebody that you
23 know you don't like and have strong feelings about.

24 And so what my colleague on the other side is asking you
25 is sort of, if he were to testify, how would you react to that?

JURY VOIR DIRE

1 And, and this -- this -- the question is really if Mr. Musk was
2 to say something and somebody else was to say something,
3 right --

4 **PROSPECTIVE JUROR DAVIDSON:** Uh-huh.

5 **MR. SPIRO:** -- do you think that even 51 percent,
6 49 percent, you could come into this swaying at all, right?
7 Because if you're swaying, then this may not be the right case
8 for you. And it may be impossible to give an unequivocal
9 assurance that you can be fair and impartial.

10 Do you think you can give an unequivocal assurance of
11 that, given your feelings about Mr. Musk?

12 **PROSPECTIVE JUROR DAVIDSON:** That's a really valid
13 question. I mean, I'd like to say yes and I believe I --
14 again, pretty logically minded, but then again, I do think
15 everyone has some inherent bias. Granted, I mean, if you're
16 sworn under oath, you should not be lying, so unless there was
17 evidence to prove he was lying, then you would have to take him
18 on his word.

19 **MR. SPIRO:** Well, I -- I appreciate you saying you
20 can't give an unequivocal assurance. The question isn't even
21 necessarily, you know, black and white. Again, back to that.

22 **PROSPECTIVE JUROR DAVIDSON:** Yeah.

23 **MR. SPIRO:** Is he lying, is he not lying. But if a
24 couple of other witnesses said something different from him and
25 said, you know, he's only saying that because of some factor

JURY VOIR DIRE

1 that you already believe about him, don't you think that oath
2 or not, best you can do or not, you know, even if you're giving
3 your best, that you would -- you would be swayed ever so
4 slightly?

5 **PROSPECTIVE JUROR DAVIDSON:** I mean, it's possible,
6 but if there's not evidence to support other people's
7 assertions, then, like, how do I know they're not lying? So I
8 guess I'm not really giving you a great answer, but, yeah.

9 **THE COURT:** So sounds like, in the end, you think you
10 can --

11 **PROSPECTIVE JUROR DAVIDSON:** Yeah.

12 **THE COURT:** You're not certain but you're -- I think
13 you used the word pretty -- what did you say -- you -- you're
14 pretty confident?

15 **PROSPECTIVE JUROR DAVIDSON:** Yes.

16 **THE COURT:** But not completely confident?

17 **PROSPECTIVE JUROR DAVIDSON:** Correct.

18 **THE COURT:** All right. Thank you. Appreciate it.

19 **PROSPECTIVE JUROR DAVIDSON:** Thank you.

20 (Prospective Juror leaves the courtroom)

21 **THE COURT:** Finally, Vicky, No. 150.

22 **THE COURTROOM DEPUTY:** No. 150?

23 **THE COURT:** Yeah.

24 (Prospective Juror enters the courtroom)

25 **THE COURT:** Hi.

JURY VOIR DIRE

1 **PROSPECTIVE JUROR DOLRUEDEJ:** Hello.

2 **THE COURT:** Hi. Thank you for coming in. We just had
3 a couple of follow-up questions to ask you.

4 One of the things that was asked on the questionnaire is
5 your views about Tesla and about Mr. Musk. And I think you
6 used the words that he was talented but crazy.

7 **PROSPECTIVE JUROR DOLRUEDEJ:** Okay, yeah.

8 **THE COURT:** So we want to get a little clarification
9 from you about what you meant that.

10 **PROSPECTIVE JUROR DOLRUEDEJ:** Oh, okay. So I think
11 the talented is clear. He is obviously talented. Tesla as a
12 good breakthrough for the EV technology. Crazy is just, um,
13 talented -- I never see the person in that position, you know,
14 like a CEO, and kind of like doing some tweeting thing and
15 sometime kind of like a create -- it's nothing wrong, but for
16 something this big, I would expect something more professional
17 to handle, not really through the social media with a lot of
18 the, um -- sometime, what you say, a personal opinion kind of
19 thing. And I think to me, the person, the social media is more
20 like for the professional life, and not -- oh, I mean, for the
21 personal life, not the professional life. And I think that
22 what I meant.

23 **THE COURT:** All right. So the fact that he's saying
24 things about -- business things by tweet as opposed to a formal
25 process, that's unusual in your view?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR DOLRUEDEJ:** Yes. And also the
2 content, right. I mean, if it's -- I mean, when you read it,
3 you can tell right away whether this is, like, a professional
4 message or just the personal view. Or the -- more like a
5 formal thing, yeah, like that what I mean.

6 **THE COURT:** So as you know, this case is about tweets
7 that the -- that one side, the plaintiff claims was misleading
8 and -- and had an effect on the market. And there may be some
9 question about whether the board, for instance, of Tesla is
10 responsible in one way or another.

11 **PROSPECTIVE JUROR DOLRUEDEJ:** Uh-huh.

12 **THE COURT:** Does that, your view of how Mr. Musk has
13 been using Twitter and his, I guess, casualness in using that,
14 would that color your views in a way that would prevent you
15 from listening to the evidence and only listening to the
16 evidence in this courtroom and judging that fairly and
17 neutrally? Or do you think that might affect the way you hear
18 the evidence, see the evidence and maybe the way you might see
19 this case?

20 **PROSPECTIVE JUROR DOLRUEDEJ:** Honestly I don't know.
21 I would think that, I mean, without evidence, I probably can be
22 neutral. And honestly, I answer that questionnaire and --
23 because after I answer the questionnaire, I figure out that
24 this probably about this case, then I kind of like search up
25 the news and some across this news. I didn't know about this

JURY VOIR DIRE

1 case before, but I think I can try to be neutral and fair.

2 **THE COURT:** So you think you can try to be, which I
3 appreciate, because that's what we ask of people but how
4 confident would you be? Are you certain you could be neutral?
5 Or do you have some doubt?

6 **PROSPECTIVE JUROR DOLRUEDEJ:** Personal view, I still
7 think the social media is not probably the outlet to handle the
8 professional thing. That I think -- I mean, with the way I
9 work, I can get news right out and try to be -- and be neutral,
10 yeah.

11 **THE COURT:** So you can try to be neutral.

12 **PROSPECTIVE JUROR DOLRUEDEJ:** Yeah.

13 **THE COURT:** But there's a chance you may not be able
14 to?

15 **PROSPECTIVE JUROR DOLRUEDEJ:** I try my best.

16 **THE COURT:** Okay. All right. Follow-up?

17 **MR. APTON:** Yes. What we're looking for is a juror
18 who is confident that they can act impartially, who's confident
19 that they can see the facts now as they are presented and not
20 be influenced by what they may have learned prior to coming
21 here.

22 And so prior to coming here today, are you aware of
23 Mr. Musk engaging in any important business transactions over
24 Twitter?

25 **PROSPECTIVE JUROR DOLRUEDEJ:** Not in this particular

JURY VOIR DIRE

1 case.

2 **MR. APTON:** Okay.

3 **PROSPECTIVE JUROR DOLRUEDEJ:** Not in this particular
4 case. But, I mean -- I mean, the news with Mr. Musk and
5 Twitter is kind of on and off, on and off for quite some time,
6 so I kind of see that sometime. But not in this particular
7 case.

8 **MR. APTON:** So this case has nothing to do with
9 Mr. Musk's management of Twitter. This case is about a tweet
10 that he made four and a half years ago. Are you sure, are you
11 confident -- and that's what we need to know -- are you
12 confident that you will be able to assess the evidence fairly
13 and apply the law accurately and be impartial?

14 **PROSPECTIVE JUROR DOLRUEDEJ:** Yeah, I think I can.

15 **MR. APTON:** Okay. Is -- I mean, that's -- on this
16 scale of confidence, we've seen some answers that vary. On a
17 scale of 1 to 10, where would you rate yourself? 10 being,
18 yes, I can absolutely do it, no question about it,
19 unequivocally; 1 being I definitely can't do it.

20 **PROSPECTIVE JUROR DOLRUEDEJ:** I think what I'm trying
21 to say is when I know that the bias kick in, I would try to
22 recalibrate myself and be fair. Put it that way. I'm not
23 going to say that I'm not going to have a bias at all
24 whatsoever, because it's kind of like the way I view things for
25 so many years and I don't want to lie here, but what I can do

JURY VOIR DIRE

1 is when that thing kick in, I would try to realize and
2 recalibrate myself back.

3 **MR. APTON:** Okay, thank you.

4 **PROSPECTIVE JUROR DOLRUEDEJ:** Uh-huh.

5 **THE COURT:** Thank you.

6 **MR. SPIRO:** Is it necessary to ask follow-up
7 questions?

8 **THE COURT:** I'll let you ask a couple. Yeah.

9 **MR. SPIRO:** Okay. It's -- thank you for coming in,
10 thanks for being so honest, we appreciate it. We are trying to
11 get a fair jury here. And, you know, part of that is not
12 coming in to the case with any views, right? Because those
13 views could then affect your judgment of the case. Because,
14 you know, we're not -- people are not robots. It's hard to
15 leave everything on the outside.

16 It sounded to me from your questions and answers with His
17 Honor that you have, you know, strongly held views that the way
18 that he uses Twitter for business is not the appropriate way to
19 do that. Is that fair?

20 **PROSPECTIVE JUROR DOLRUEDEJ:** I think that's fair, for
21 my personal view, yeah.

22 **MR. SPIRO:** Okay. That's exactly -- that's a lot to
23 do with what this case is about. Do you understand?

24 **PROSPECTIVE JUROR DOLRUEDEJ:** Uh-huh.

25 **MR. SPIRO:** Yeah, so is it your feeling -- and I think

JURY VOIR DIRE

1 you have already said this -- that it's probably not the
2 easiest case for you to be fair and impartial on because you
3 already hold those views, that maybe in a different case that
4 you didn't have a previous view on would be easier?

5 **PROSPECTIVE JUROR DOLRUEDEJ:** That's probably fair,
6 yeah.

7 **MR. SPIRO:** So you can't give, right, and you haven't
8 given -- you can't be positive that those -- since you have the
9 views about his use of Twitter in business, that that won't
10 impact you here. You can't be positive of that?

11 **PROSPECTIVE JUROR DOLRUEDEJ:** Like I said, I probably
12 have some bias. If I get picked and have to do this, all I can
13 do is just remind myself and recalibrate and look at the
14 evidence and try to be fair. I mean, I -- my personal view is
15 one thing, but I don't say that my personal view is the way to
16 go. So I respect that different people do different thing, so
17 that is what I just remind myself. And, I mean, that's true
18 for anything in life, anyway.

19 **MR. SPIRO:** Thank you very much.

20 **THE COURT:** All right. Thank you, I appreciate that.
21 Thank you very much.

22 (Prospective Juror leaves the courtroom)

23 **THE COURT:** Okay. We've kept the rest of the pool
24 waiting. And rather than discussing taking challenges, I think
25 we have the information. I want to bring the pool back and see

JURY VOIR DIRE

1 if you have any follow-up questions with anybody else. And --
2 and then -- and then I think we will be in a position, unless
3 there's some -- a couple of follow-ups we still may need, like
4 the -- on one or two of them where I think we would be in
5 position to then take a break to take challenges for cause and
6 then exercise your peremptories.

7 So, if everybody's still there, like them to come back.
8 And I'm going to excuse some of them. There's about eight of
9 them I will excuse.

10 **THE COURTROOM DEPUTY:** Correct.

11 **MR. APTON:** Judge, approximately how much time do we
12 have?

13 **THE COURT:** How much time do we have?

14 **MR. APTON:** For voir dire?

15 **THE COURT:** Well, I'm going to give you 15 minutes
16 each at this point because we've been through a lot already.

17 (The following proceedings were held in the presence of
18 the jury venire.)

19 **THE COURT:** Okay. First of all, let me thank you for
20 your patience. The process took a little longer than we
21 thought so I'm sorry to keep you waiting. And again,
22 appreciate your cooperation. At this point there are a number
23 of you that I'm going to thank and excuse and ask you to report
24 back to the jury office to let them know you've been relieved
25 of serving in this case. So I'll read out that list.

JURY VOIR DIRE

1 Juror No. 8, Ms. Liu, thank you for your service and good
2 luck.

3 Ms. Jahan, thank you. Report to the jury administrator.

4 Juror No. 31 I think we've already excused, Ms. Gomez, she
5 did have that plane to catch.

6 Juror No. 44, Ms. Nuku, thank you. Thank you for your
7 service. You can go to the jury room and report back.

8 Juror No. 49, Ms. De La Cruz.

9 **PROSPECTIVE JUROR DE LA CRUZ:** Thank you.

10 **THE COURT:** Thank you.

11 Juror No. 101, Ms. Xu, you are excused, thank you. Thank
12 you for your service and good luck.

13 Juror No. 114, Ms. Kumar, thank you.

14 Let's see. 127 and 128 aren't here, right? Right.
15 They're not here. Okay.

16 And, okay, those are the ones for now. The rest of you
17 are still with us. We hope to complete this process pretty
18 quickly now. This is the point at which the attorneys will
19 have a chance to ask some questions to the rest of you, and we
20 are going to start with the plaintiffs. If you have some
21 questions, I'll give you 15 minutes.

22 **MR. APTON:** Thank you, Judge.

23 Again, my name is Adam Apton. I represent the plaintiff
24 here. And I want to ask you a few of you questions. I won't
25 be able to ask all of you questions, nor would you want that.

JURY VOIR DIRE

1 But let me try to move through as quickly as possible. And if
2 you can't hear me, and/or if you want me to speak up, just ask
3 me. Okay?

4 **THE COURT:** You can remove your mask for purposes of
5 speaking. Thank you.

6 **MR. APTON:** Thank you, Your Honor.
7 First, is there Mr. Buckley?

8 **PROSPECTIVE JUROR BUCKLEY:** Yes.

9 **MR. APTON:** How are you, sir?

10 **PROSPECTIVE JUROR BUCKLEY:** Good.

11 **MR. APTON:** Mr. Buckley, I understand, based on your
12 questionnaire -- sorry, based on your --

13 **THE COURT:** Which number? Could you give us the
14 number.

15 **MR. APTON:** 45.

16 **THE COURT:** All right. Thank you.

17 **MR. APTON:** Based on your questionnaire, you may be
18 having some difficulties at home right now? And I just wanted
19 to know if that was a problem for you in terms of time
20 constraints in the next three weeks?

21 **PROSPECTIVE JUROR BUCKLEY:** No, it isn't.

22 **MR. APTON:** And follow-up question. On your
23 questionnaire you did indicate that you had potentially
24 difficulty serving on the jury based on a work situation
25 earlier when we were talking. And then you seemed to change

JURY VOIR DIRE

1 your mind during the course of that questioning. I just wanted
2 to know a little bit more information as to why, why you
3 changed your mind.

4 **PROSPECTIVE JUROR BUCKLEY:** This might be historical,
5 we'll wait and see. If I'm in a -- if I'm sitting on the
6 sidelines in history, I would like to be -- I'd like to be
7 there, if possible.

8 **MR. APTON:** And do you view this case as -- I don't
9 know -- making history, I guess?

10 **PROSPECTIVE JUROR BUCKLEY:** It might.

11 **MR. APTON:** And why do you say that?

12 **PROSPECTIVE JUROR BUCKLEY:** Well, it involves so many
13 different things. Social media, a major corporation,
14 securities, a lot of things going on here.

15 **MR. APTON:** I understand. And do you, yourself, use
16 social media?

17 **PROSPECTIVE JUROR BUCKLEY:** I do -- well, a little bit
18 of Facebook but not -- not that much.

19 **MR. APTON:** Understood. Okay. Thank you, sir.

20 **PROSPECTIVE JUROR BUCKLEY:** You are welcome.

21 **MR. APTON:** Appreciate that.

22 Is there a Mr. Marshall?

23 **PROSPECTIVE JUROR MARSHALL:** Right here.

24 **MR. APTON:** How are you, sir?

25 **PROSPECTIVE JUROR MARSHALL:** Hi.

JURY VOIR DIRE

1 **MR. APTON:** Nice to see you.

2 **PROSPECTIVE JUROR MARSHALL:** Yes.

3 **MR. APTON:** I understand that you have an IRA, based
4 on your questionnaire?

5 **PROSPECTIVE JUROR MARSHALL:** Say that again? I'm
6 sorry.

7 **MR. APTON:** That you have an IRA or a retirement fund?

8 **PROSPECTIVE JUROR MARSHALL:** Yes.

9 **MR. APTON:** And in your IRA you own an index fund, you
10 have shares in an index fund, and you are under the impression
11 that that index fund has Tesla in it, is that right?

12 **PROSPECTIVE JUROR MARSHALL:** Well, it's an index fund
13 that follows, I think, the Standard & Poor 500 or -- so, yeah,
14 I'm sure it has some Tesla.

15 **MR. APTON:** I see. But you don't know how much or how
16 it's weighted?

17 **PROSPECTIVE JUROR MARSHALL:** No, it basically tracks
18 the stock market.

19 **MR. APTON:** I understand. And, I have to ask, you
20 listed as one of your news sources was the Doug Jones Report.
21 Is that right?

22 **PROSPECTIVE JUROR MARSHALL:** The what?

23 **MR. APTON:** The Doug Jones Report?

24 **PROSPECTIVE JUROR MARSHALL:** Doug Ross.

25 **MR. APTON:** Doug Ross, excuse me. Can you tell me

JURY VOIR DIRE

1 about that?

2 **PROSPECTIVE JUROR MARSHALL:** Oh, it's -- it groups
3 various news media from both left and right, a selected -- you
4 know, like, things like *The Hill*, *Wall Street Journal*, *The*
5 *Post*, *The Washington Post*. A whole bunches of news sources and
6 subject matter.

7 **MR. APTON:** And so you appreciate that it provides you
8 with content from both sides, is that right?

9 **PROSPECTIVE JUROR MARSHALL:** Yes, uh-huh.

10 **MR. APTON:** And if selected to serve on this jury,
11 would you do that, you would look at both sides equally?

12 **PROSPECTIVE JUROR MARSHALL:** Oh, yeah, uh-huh.

13 **MR. APTON:** And not give anyone an edge, so to speak?

14 **PROSPECTIVE JUROR MARSHALL:** Oh, no disproportionate.

15 **MR. APTON:** How are you able to say that with such
16 definitiveness?

17 **PROSPECTIVE JUROR MARSHALL:** Well, I know my mind and
18 I feel like I'm pretty responsible and open-minded.

19 **MR. APTON:** I understand. Thank you. Thank you.
20 I'm going to move on. Ms. Yonan?

21 **THE COURT:** Which number?

22 **MR. APTON:** 36.

23 How are you?

24 **PROSPECTIVE JUROR YONAN:** Good, how are you?

25 **MR. APTON:** Good, thank you. So I have a question. I

JURY VOIR DIRE

1 understand you work at TJ Maxx?

2 **PROSPECTIVE JUROR YONAN:** Actually, Ross Dress for
3 Less.

4 **MR. APTON:** I'm sorry? Oh, Ross.

5 **PROSPECTIVE JUROR YONAN:** Ross, yeah.

6 **MR. APTON:** And you have shifts there?

7 **PROSPECTIVE JUROR YONAN:** I do. I'm a store manager
8 so it's any time.

9 **MR. APTON:** Okay. And what is your plan for the next
10 three weeks?

11 **PROSPECTIVE JUROR YONAN:** Well, I just found out that
12 my assistant during our lunch will be going on an LOA, so a
13 leave of absence, due to some family stuff. So the original
14 plan was for her to take over for the next few weeks while this
15 is all happening, but now that I just got that call, I'm going
16 to see if I can have other arrangements made, but I don't think
17 my boss will be able to do that, unfortunately.

18 **MR. APTON:** I understand. And are you aware of
19 whether Ross pays for -- will pay you while you're on jury
20 service?

21 **PROSPECTIVE JUROR YONAN:** I'm not sure, actually. My
22 boss was going to find that out for me, but as far as I'm
23 aware, no.

24 **MR. APTON:** Okay. And if you did have to cover shifts
25 in the afternoon, because we end at 2:00, you live where again?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR YONAN:** Bay Point, Pittsburg area.

2 **MR. APTON:** How long did it take you to get here
3 today?

4 **PROSPECTIVE JUROR YONAN:** Well, I left really early so
5 I missed the traffic, but it took me about like 30 to 45
6 minutes or so.

7 **MR. APTON:** And if you have to go back after court?

8 **PROSPECTIVE JUROR YONAN:** I will probably be hitting
9 traffic so maybe over an hour, to an hour 15.

10 **MR. APTON:** Do you think it might be a problem for you
11 to be on this jury, given your work situation?

12 **PROSPECTIVE JUROR YONAN:** Possibly, because sometimes
13 my managers leave at 2:00 and then I have some managers that
14 leave at 3:00 or 3:30, so I'll either be cutting it close or I
15 will be getting there as soon as they're leaving.

16 **MR. APTON:** Okay. Thank you.

17 **PROSPECTIVE JUROR YONAN:** Uh-huh.

18 **THE COURT:** So let me ask, Ms. Yonan, bottom line is,
19 is there a possible that you would not be able to serve given
20 what's happened with your assistant manager?

21 **PROSPECTIVE JUROR YONAN:** I'll be finding out more
22 information probably later, in the next few hours, but as far
23 as I'm aware, my boss is trying to figure out if he can get
24 somebody to cover my store.

25 **THE COURT:** So you won't know -- the problem is we're

JURY VOIR DIRE

1 going to be --

2 **PROSPECTIVE JUROR YONAN:** Yeah, I know.

3 **THE COURT:** So as you sit here right now, what is the
4 chance that the boss -- that you are going to be needed?

5 **PROSPECTIVE JUROR YONAN:** Yeah, probably, most likely
6 I will be needed. He'll be --

7 **THE COURT:** Most likely you'll be needed?

8 **PROSPECTIVE JUROR YONAN:** Yeah.

9 **THE COURT:** And the hours of this Court doesn't allow
10 you to get back in time?

11 **PROSPECTIVE JUROR YONAN:** No, not necessarily, no.

12 **THE COURT:** Okay, thank you.

13 **PROSPECTIVE JUROR YONAN:** Uh-huh.

14 **MR. APTON:** Mr. Sharma, how are you?

15 **THE COURT:** Juror number, please?

16 **MR. APTON:** 32, Your Honor.

17 **THE COURT:** Thank you.

18 **MR. APTON:** Mr. Sharma, so one thing we are trying to
19 do today with you all is make sure that whomever is on our jury
20 will be able to assess the facts fairly. And you saw the
21 video, you went through the orientation.

22 There was a comment on your questionnaire, you described
23 -- excuse me -- Elon Musk as a fast-rising businessman, and I
24 wonder if you could tell me a little bit about why you think
25 that.

JURY VOIR DIRE

1 **PROSPECTIVE JUROR SHARMA:** Just a general impression.

2 I mean, I don't follow much on social media about rich and
3 famous but just came across, and I know I saw a documentary a
4 long time back where he pretty much rose from, you know, from
5 the grass roots.

6 **MR. APTON:** Uh-huh.

7 **PROSPECTIVE JUROR SHARMA:** So that was my general
8 impression. Nothing more than that.

9 **MR. APTON:** Would you say in that regard you have some
10 respect or admiration for him?

11 **PROSPECTIVE JUROR SHARMA:** I -- I don't know in the
12 context of the case, I won't be able to comment on that,
13 because, um, everyone has their good and bad side. But I won't
14 say like any admiration, I would get an admiration for somebody
15 just because he's rich or something like that.

16 **MR. APTON:** Uh-huh.

17 **PROSPECTIVE JUROR SHARMA:** Yeah.

18 **MR. APTON:** I want to make sure that your personal
19 opinions about Musk will not influence the way you see or hear
20 his testimony, that you won't give him an edge or you won't let
21 his rise, as you put it, from grass roots, regardless of
22 whether that's true or false, but your understanding of how he
23 came to where he is, that you won't let that influence you, you
24 won't let it color your perception of the testimony. And if
25 you do, that's okay, this isn't the right case for you, then.

JURY VOIR DIRE

1 So --

2 **PROSPECTIVE JUROR SHARMA:** No, it won't. It won't
3 color, I promise. Yeah.

4 **MR. APTON:** Okay. Thank you.
5 If we could please speak with Mr. Daing, number 68.

6 **PROSPECTIVE JUROR DAING:** Hi.

7 **MR. APTON:** Hello. How are you, sir?

8 **PROSPECTIVE JUROR DAING:** Pretty good. Yourself?

9 **MR. APTON:** Pretty good, thank you. So your -- if I
10 remember correctly, on your questionnaire, similar to
11 Mr. Sharma, you referred to Musk as a smart, successful
12 pioneer. So I want to see if, given what you know or what
13 you've read about Mr. Musk, if that's going to influence the
14 way you see his testimony or hear his testimony and how much
15 importance you give it.

16 **PROSPECTIVE JUROR DAING:** It's irrelevant, really.

17 **MR. APTON:** Why do you say that, sir?

18 **PROSPECTIVE JUROR DAING:** Impressions about him being
19 a successful rich person is obvious, everybody knows that. But
20 the merits of the case will have to be decided on principle.

21 **MR. APTON:** And the facts too, of course.

22 **PROSPECTIVE JUROR DAING:** Of course.

23 **MR. APTON:** So there are a number of facts in this
24 case, some are complex. I understand that you have concerns
25 about being out from work. Would those concerns distract you

JURY VOIR DIRE

1 at all or interfere with your ability to pay close attention to
2 the evidence?

3 **PROSPECTIVE JUROR DAING:** Only to the extent that if
4 it's so unpredictable, I don't know if I'll get a call right
5 here and now, or it may not happen at all. Like it hasn't
6 happened all day today, so far. So --

7 **MR. APTON:** Yeah. What if you are not able to have
8 your phone while you're in the jury box? Or you're not able to
9 look at it?

10 **PROSPECTIVE JUROR DAING:** Um, depends on the urgency
11 of the issue, how urgently it need to be tackled. If somebody
12 wants an advance against his pay, that can wait. But if it's a
13 customer-related issue or a mechanical issue or stuck -- as I
14 explained earlier, it's just so unpredictable, there is no way
15 of knowing what might come up.

16 **MR. APTON:** So does that give you uncertainty as to
17 whether you're going to be able to serve on this jury for the
18 full three weeks?

19 **PROSPECTIVE JUROR DAING:** To the extent, that, you
20 know, again, I don't know if I'm going to get a call, it
21 doesn't happen every day, it hasn't happened all day today so
22 far, so there is no real way to answer that question.

23 **MR. APTON:** Understood. Thank you.

24 **THE COURT:** If I could ask one follow-up question. I
25 understand that, you know, you want to be on call for obvious

JURY VOIR DIRE

1 reasons, but I think the rule is during the trial time, during
2 that 90-minute segment, we all have to turn our phones off.
3 You can turn it on during a break, every 90 minutes you will
4 get a break and you can -- is that okay with you?

5 **PROSPECTIVE JUROR DAING:** Possibly. Most -- more than
6 likely, yes.

7 **THE COURT:** Okay. Well, you'll have to follow the
8 rules, so I guess the question is --

9 **PROSPECTIVE JUROR DAING:** Yes. If I put the phone
10 away for 90 minutes, I have to tell them that I'm not
11 accessible for 90 minutes, this is an alternate solution,
12 depending on the issue. I really can't predict.

13 **THE COURT:** Okay. But you could follow my rule about
14 putting the phone away for 90 minutes?

15 **PROSPECTIVE JUROR DAING:** Sure.

16 **THE COURT:** All right. Thank you.

17 **MR. APTON:** Appreciate it.

18 If I could speak with, please, Mr. Amur, No. 81.

19 How are you? Good afternoon.

20 **PROSPECTIVE JUROR AMUR:** Thank you.

21 **MR. APTON:** Mr. Amur, when you were speaking earlier,
22 you had said, if I remember correctly, that the ruling in this
23 case could potentially affect you personally, negatively,
24 because of your work in the EV industry.

25 **PROSPECTIVE JUROR AMUR:** Yeah, that's correct.

JURY VOIR DIRE

1 **MR. APTON:** Regardless of -- putting aside whether
2 that would actually happen or whether you are just scared that
3 it would, how would you go about preventing that fear from
4 influencing how you view the evidence, if you can?

5 **PROSPECTIVE JUROR AMUR:** I think it would be in the
6 back of my mind but I'll try to push it away, but just wanted
7 to be honest.

8 **MR. APTON:** Sure, no, it's a valid concern from your
9 perspective. So, how confident are you that you could hear the
10 testimony and -- and if you do, in fact, at the end of the
11 case, think that the plaintiffs deserve to win, so to speak,
12 can you or will you be able and how confident are you that you
13 will be able to rule in the plaintiff's favor?

14 **PROSPECTIVE JUROR AMUR:** I am not sure.

15 **MR. APTON:** Okay. It sounds like you do want to
16 fulfill your jury service but perhaps this case might not be
17 the one for you?

18 **PROSPECTIVE JUROR AMUR:** That's correct.

19 **MR. APTON:** Understood. Thank you, sir.

20 **THE COURT:** I'm going to give you three more -- I'm
21 going to extend your time, but three more minutes.

22 **MR. APTON:** Okay. I do have a question for
23 Ms. Bransfield.

24 **THE COURT:** No. 74.

25 **MR. APTON:** 74.

JURY VOIR DIRE

1 **THE COURT:** Okay.

2 **MR. APTON:** Ms. Bransfield, how are you this
3 afternoon?

4 **PROSPECTIVE JUROR BRANSFIELD:** Doing great. Thank
5 you.

6 **MR. APTON:** Okay. I understand that -- do you have
7 any experience with class actions?

8 **PROSPECTIVE JUROR BRANSFIELD:** Just a little. A
9 former employer was in a class action lawsuit.

10 **MR. APTON:** And which employer was that?

11 **PROSPECTIVE JUROR BRANSFIELD:** Encore Marketing.

12 **MR. APTON:** Encore. And were you named as a defendant
13 in that case?

14 **PROSPECTIVE JUROR BRANSFIELD:** No, I don't believe so.

15 **MR. APTON:** Were you involved in discovery?

16 **PROSPECTIVE JUROR BRANSFIELD:** I did do a deposition.
17 Never went to trial.

18 **MR. APTON:** And do you recall the name of the -- the
19 firm that represented Encore?

20 **PROSPECTIVE JUROR BRANSFIELD:** Mike Cherry was the
21 attorney. I do not remember the firm. Out of the Chicago.

22 **MR. APTON:** Were you deposed?

23 **PROSPECTIVE JUROR BRANSFIELD:** Yes.

24 **MR. APTON:** How was that experience?

25 **PROSPECTIVE JUROR BRANSFIELD:** It was interesting.

JURY VOIR DIRE

1 **MR. APTON:** Okay. Given your experience in that
2 process, how are you feeling about potentially sitting on the
3 jury in this case?

4 **PROSPECTIVE JUROR BRANSFIELD:** Um, I think I have some
5 experience in it so I kind of understand both sides.

6 **MR. APTON:** So, are you able to -- what experience is
7 that? Are you talking about the class action lawsuit?

8 **PROSPECTIVE JUROR BRANSFIELD:** Yeah.

9 **MR. APTON:** Yes.

10 **PROSPECTIVE JUROR BRANSFIELD:** Also, you know, just
11 some of the things that are being brought up, having been a
12 broker at SEC.

13 **MR. APTON:** Okay. So separate and apart from what you
14 know, the laws at issue here relate to the Securities Exchange
15 Act of 1934 and particular provisions relating to
16 misrepresentations and fraudulent statements. Do you have
17 experience with those particular laws?

18 **PROSPECTIVE JUROR BRANSFIELD:** No.

19 **MR. APTON:** So would you be able to put your other
20 legal experience aside and start fresh, completely clean slate,
21 going forward in this case?

22 **PROSPECTIVE JUROR BRANSFIELD:** Absolutely.

23 **MR. APTON:** Okay. And I have to ask, on your
24 questionnaire, you -- you say that class actions are horrible.
25 Why do you say that?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR BRANSFIELD:** I just believe in tort
2 reform. So again, I just believe in personal class -- personal
3 actions, not so much classes or groups that are suing
4 individuals or companies.

5 **MR. APTON:** So your comment relates to class actions
6 like securities frauds class actions?

7 **PROSPECTIVE JUROR BRANSFIELD:** No, not securities.

8 **THE COURT:** If you can bring the mic closer.

9 **PROSPECTIVE JUROR BRANSFIELD:** Yeah, I'm just saying
10 in just general class action lawsuits.

11 **THE COURT:** And I think the answer is, is you weren't
12 applying that to securities class actions?

13 **PROSPECTIVE JUROR BRANSFIELD:** Yeah, I'm not tying the
14 two together.

15 **THE COURT:** Okay.

16 **MR. APTON:** So in this case, if let's say you are on
17 the jury and the jury does find liability against the
18 defendants --

19 **PROSPECTIVE JUROR BRANSFIELD:** Uh-huh.

20 **MR. APTON:** -- and the plaintiffs are requesting a
21 sizable damages amount, would you have any reservations in
22 awarding that if you thought it was the fair thing to do?

23 **PROSPECTIVE JUROR BRANSFIELD:** No, I would go by the
24 Court's instructions.

25 **MR. APTON:** Thank you.

JURY VOIR DIRE

1 **PROSPECTIVE JUROR BRANSFIELD:** Sure.

2 **MR. APTON:** Your Honor, mindful of the time, I don't
3 have any further --

4 **THE COURT:** All right.

5 **MR. APTON:** -- right now.

6 **THE COURT:** Twenty minutes, so I'm going to give 20
7 minutes to the other side as well.

8 **MR. SPIRO:** Good afternoon, everybody. I know it's
9 been a long day so I'm going to get right to it. I'm going to
10 ask you all for the same thing that you did on your
11 questionnaires, which is simply for brutal honesty. Right?
12 That is all that this is about.

13 This is a serious case. As my colleague on the other side
14 just said, it is a securities fraud case. These are serious
15 matters and we need to make sure that we get this right, and we
16 need to make sure that we have a fair and impartial jury. And
17 something else that my adversary said that I agree with is that
18 if this case isn't right for you, there might be another case,
19 this is the time. Once the doors close and you are on the
20 jury, it's too late to come back and say: You know, I harbor
21 this feeling. It would be unfair. It would be too late for
22 that. This is the time. And so, let's jump right in.

23 The -- the questionnaires that you filled out, you know,
24 made you swear sort of around oath that you gave accurate
25 answers; there were a lot of important questions on that. You

JURY VOIR DIRE

1 know, you may remember -- I don't know if you remember
2 Mr. Martinez, the question about making split-second decisions
3 in life. You know, when something can happen quickly,
4 everybody remember that question? That was an important
5 question. There were a lot of important questions on there.
6 And I assume that everybody doesn't have anything that they
7 need to change or tell us, that we can count on your answers to
8 those questions and that we can count on them when selecting a
9 fair and impartial juror.

10 You know, I don't want to sort of, you know, hide the lede
11 here. This case involves Mr. Musk and people have feelings
12 about Mr. Musk. And so, you know, some people on the form, you
13 know, they said "no comment." You know, I don't know if that's
14 like a sports -- like, you know, sometimes a sports guy, "no
15 comment," but he wants to say something but didn't say -- you
16 know, and some folks -- you know, Mr. Margoulis (sic), not
17 going to put you on the spot, Juror No. 46, but you shared
18 that, you know, you're in an industry related to something he's
19 working on so you're in, you know, like -- I don't know whether
20 it's, you know, group discussions or whatnot but you're privy
21 to information, you know, and if you need to share something,
22 you can also ask to share something at the bench, you don't
23 have it to do it out loud. But if there's something that
24 you've learned and experienced that you feel you bring with you
25 into the courtroom, right, that would not allow you to be

JURY VOIR DIRE

1 perfectly, fair, even, right, not leaning or swaying to one
2 side, this is the time because you're going to have to judge
3 credibility and -- and who's being more accurate and things
4 like that. So, you really have to be very forthright with us
5 at this time.

6 So, what I'm basically asking is if you have something,
7 that you bring it to our attention. And that you commit to us
8 that you come into this without bias, implicit bias, swaying of
9 any kind because of the ways that you feel about Mr. Musk and
10 can sort of -- I'm not going to have time and it's late in the
11 day to go through everybody, but -- but everybody who sits and
12 I'm sort of looking out at the room, I'm not trying to ignore
13 this group (Indicating) but it's dissipated a little, of folks
14 out here -- can everybody commit to that, right?

15 So I'm sort of looking around for head nods and assurances
16 and eye contact to just sort of say can you commit, right?
17 Because the system only works if everybody agrees with that,
18 right? It only works if everybody is fair. So I'm taking
19 everybody who's sort of nodding and looking at me that they can
20 commit to that.

21 So one of the things I want to jump into is, you know,
22 you're going to be told to assume in this case that a couple of
23 Mr. Musk's tweets, you know, when he -- you know, sort of
24 short-form statements that he made, are -- were inaccurate,
25 were untrue. And so in this trial, you are going to be asked

JURY VOIR DIRE

1 to decide -- not that question. You assume that question.
2 They were untrue, they were inaccurate. You're going to be
3 asked to decide whether in the context in which they were made,
4 were they important to a reasonable investor in buying and
5 selling securities. Right?

6 So what I have to ask you is, you know, once -- I am now
7 telling you, assume that they are untrue and inaccurate. Does
8 anything -- does learning that make you think, you know, I'm
9 going to have a hard time, right? So you have to be honest
10 with yourself. I can't peer into your mind, hearts and souls.
11 You have to be honest with yourself. If I'm telling you that
12 and you are going to assume that, is that something that you
13 think is going to cause you to have a hard time listening to
14 the judge's other instructions? It's an untrue statement. I
15 now feel differently. I feel now, you know -- I know it's
16 untrue; I'm going to have a hard time hearing the rest of the
17 evidence because I know he said something that is inaccurate.

18 Does anybody feel that way? Right? You don't have to be
19 shy. I mean, it's going to be hard for the first person to
20 raise their hand, but if you feel that you would have a hard
21 time listening to what this case is about, right, which is
22 essentially, right, with the way that securities law works, is
23 would the real state of affairs, right, have been different
24 than what he said inaccurately in the short-form tweet. Right?
25 So that's what you're here to -- that's a big part of what you

JURY VOIR DIRE

1 are here to decide.

2 So the question is, is there anyone here that thinks: Now
3 that I've heard that one of his tweets is untrue, inaccurate,
4 that I can't keep an open mind to hear the rest of the case?

5 (No response)

6 **MR. SPIRO:** Okay. So I'm going to take everybody --
7 and I'm going to ask everybody to commit to me that when you
8 are told to assume that, that that is not going to make it so
9 that you can't sit and be fair and impartial about the rest of
10 the case. And so I'm going to sort of look around and sort of
11 see if everybody can commit that to me. Can you commit to me
12 to follow the law and answer the question presented to you,
13 even when you found out, which I'm telling you, assume it's
14 untrue, can you do that?

15 (Some Prospective Jurors nod heads.)

16 **MR. SPIRO:** And I'm looking at the front row. And
17 over here, can everybody commit?

18 **PROSPECTIVE JUROR L. YOUNG:** I guess if I understand
19 you correctly, you are saying --

20 **THE COURT:** Well, let's -- we need to get your name
21 and number and get you the microphone, so if you could tell us
22 your name and jury number.

23 **PROSPECTIVE JUROR L. YOUNG:** Yes, I'm Juror No. 110.
24 My name is Lucian Young.

25 To understand your point completely, are you saying that

JURY VOIR DIRE

1 if I tell you it's untrue, that's what we have to believe? Or
2 are you saying is if you see this statement, you interpret it,
3 as is? Just so I understand you correctly.

4 **MR. SPIRO:** I'm telling you that in this case you're
5 going to be told to assume that it's not true. Right? You're
6 going to be told the tweet is not true. It is not technically
7 accurate.

8 **PROSPECTIVE JUROR L. YOUNG:** But it's a tweet. It
9 says what it says, right? So you have to take it by face
10 value, it's what it says. If somebody tweeted "I went to the
11 store," you take it as: I went to the store. So, whatever is
12 tweeted, are you telling me not to interpret it, but just say
13 it's not true?

14 **MR. SPIRO:** I'm telling that it's -- to assume that
15 it's not true, the person didn't go to the store in your
16 example, right, and to assume that that's not true. But keep
17 your -- just because they said something that turned out to be
18 in that short-form tweet technically inaccurate, can you keep
19 your open mind and decide the case about what it's about?

20 So, some people could say, right: Well, now that I know
21 that that person tweeted something untrue, my mind is closed.
22 That's untrue, that's wrong, I'm done here.

23 **PROSPECTIVE JUROR L. YOUNG:** If the courts are saying
24 that it's untrue and they made that determination, then I
25 believe so.

JURY VOIR DIRE

1 **MR. SPIRO:** So, right. So let's use a real-world
2 example, right. In your store -- let's say somebody tells you
3 it's raining outside. Right? You should get a jacket. Let's
4 say that wasn't true. You learn it wasn't true. The person,
5 they were wrong. They were incorrect, inaccurate, untrue. But
6 it was snowing outside. Right? The question then to you would
7 be, you still wore your jacket, right? You wore your jacket in
8 the snow? Okay.

9 So the question would be for you jurors: Is the state of
10 affairs that you knew, right, different, materially different
11 from what ended up happening. Right? So the information was
12 wrong. It wasn't raining; it was snowing. Right?

13 So the question for you is -- for you jurors to decide is
14 the difference between the two. The difference between the
15 technically inaccurate tweet, right, and what really happened.
16 That's the question.

17 So some people might say: Once I find out it's
18 inaccurate, I'm done, my mind is closed. And what we're hoping
19 and what I need your commitment on, is that in this case,
20 that's just the start of the journey. Your job is to decide --
21 a big part of getting it to you to decide: Does that matter?
22 Is it material, the example here, raining versus snowing?

23 Do you understand?

24 **PROSPECTIVE JUROR L. YOUNG:** Yeah, I sort of get it.

25 **MR. SPIRO:** Okay.

JURY VOIR DIRE

1 **PROSPECTIVE JUROR L. YOUNG:** I guess my viewpoint
2 would be, if that's the case, then to me it's credibility,
3 right? Then whatever might be said, or beyond that, you would
4 then have to decipher on your own what the validity of it is.

5 **MR. SPIRO:** Right. And you would look to other
6 evidence, right? You would look to other witnesses, right?
7 You would look to documents that you see? You would look to
8 whether it matters in human experience, right? Does it matter
9 when you're making a decision about putting a jacket on, is it
10 raining, is it snowing, right? True or untrue, does it matter,
11 because you ultimately wore your jacket. Right? So those are
12 the questions you jurors will be asked to decide.

13 Does everybody follow enough at this point to -- to sort
14 of give me their commitment? And I'm sort of looking...

15 (A hand is raised)

16 **MR. SPIRO:** Yes.

17 **THE COURT:** If you can state your name and jury
18 number, please. This is Juror No. 46.

19 **PROSPECTIVE JUROR MAGOULIS:** John Magoulis, 46.

20 **THE COURT:** All right.

21 **PROSPECTIVE JUROR MAGOULIS:** Yeah, I expected to get a
22 question before we committed to this so that's why I haven't
23 raised my hand until now. But I don't think I'm right for this
24 case, necessarily. That's -- I don't know if that's -- this is
25 the time to go for that, but --

JURY VOIR DIRE

1 **MR. SPIRO:** Is it related to something that I raised
2 when I sort of -- I wasn't picking on you.

3 **PROSPECTIVE JUROR MAGOULIS:** No, no, no. It's --
4 well, I have a lot of opinions.

5 **MR. SPIRO:** Okay. Well, then, if I could ask, I don't
6 think we're going to -- I have a very short clock. I think I
7 know your opinions. You were very candid on your form and I
8 appreciate it. I would ask the Court that maybe you could
9 express your opinions at the sidebar, like away from the rest
10 of the jurors, just so that we -- but I get it. You don't
11 think this case is right for you, and you don't know that you
12 can be fair and impartial.

13 **PROSPECTIVE JUROR MAGOULIS:** That's all I wanted to
14 say, yeah.

15 **THE COURT:** All right. Let me ask this much. Is it
16 because of your opinions about the people involved as opposed
17 to the subject matter or --

18 **PROSPECTIVE JUROR MAGOULIS:** Yes.

19 **THE COURT:** Yeah, all right. So we'll take that at
20 another point. Thank you.

21 **MR. SPIRO:** Okay. The other thing that came up during
22 the earlier questions was this idea of class actions and
23 plaintiffs' lawyers and things like that. And there were some
24 questions, you know, could you give a lot of money out, things
25 like that. Some of you have actually served as plaintiffs in

JURY VOIR DIRE

1 cases. Right? So I'm not -- again, I'm not picking on people
2 here. I don't think -- I hope this is not -- I don't want to
3 ask personal questions. I'd rather ask about hiking and
4 fishing and everything that you all do on your spare time, but
5 I have to ask these questions.

6 So, Mr. Moore, Juror No. 55, right, you have -- you
7 haven't had a chance to talk today so I wanted to pick on you a
8 little. You know, you've been a plaintiff, I take it? Or part
9 of a --

10 **PROSPECTIVE JUROR MOORE:** I was part of a class. And
11 they sent me a letter and I filled it out and -- so that's all
12 my involvement.

13 **MR. SPIRO:** So it's one of those, like a solicitation,
14 like an alert online or a letter that comes out and says, hey,
15 you want to be part of this case, fill out a form, that sort of
16 thing?

17 **PROSPECTIVE JUROR MOORE:** It was after the case was
18 settled, and I was told I was part of the class.

19 **MR. SPIRO:** I see. And, you know, does being part of
20 that, right -- you opted in, that's fine, you get the form, you
21 cease and desist it maybe you got a check, I don't know.

22 **PROSPECTIVE JUROR MOORE:** Not yet.

23 **MR. SPIRO:** Well, you know. Talk about that. Does --
24 does being part of that process, I mean, do you think that you
25 lean in any way closer to this table (Indicating) because it's

JURY VOIR DIRE

1 a class action, plaintiffs -- does that sway you at all?

2 **PROSPECTIVE JUROR MOORE:** No.

3 **MR. SPIRO:** I didn't think so from your original
4 reaction but, I mean, I'm going to ask your, your juror-mate to
5 the left, you know, do you think you -- 'cause this -- can you
6 say your name for me so I don't mispronounce it.

7 **PROSPECTIVE JUROR CAZESSUS:** Yolanda Cazessus, No. 57.

8 **MR. SPIRO:** Juror No. 57, thank you so much.

9 So, I mean, did -- you know, your fellow juror, Mr. Moore,
10 you know, he signed one of those forms. He was part of one of
11 them. You know, he doesn't have any leanings towards class
12 actions, plaintiffs' firms.

13 I mean, do you? Do you have a view that makes you
14 think -- or a strongly held view that, you know, listen,
15 they're, you know, suing on behalf of an individual, or on
16 behalf of a class, that I want to try to root for them, or
17 anything like that?

18 Do you lean that way at all? Or can you be fair, even,
19 and not lean?

20 **PROSPECTIVE JUROR CAZESSUS:** I would need to listen to
21 the entire -- or read or review, whatever it is that I need to,
22 in order for me to make an educated decision. I can't just go
23 one way or the other. Like right here, right now, I couldn't
24 do that.

25 **MR. SPIRO:** Great. And that's what we want. And I

JURY VOIR DIRE

1 appreciate you committing to that.

2 And back to Mr. Moore for a second. You know, some
3 people -- I was teasing about the "No comment." Some people
4 say: Listen, I have opinions but I don't have strong opinions
5 about Mr. Musk. Right? I don't know if you remember, you said
6 that on your questionnaire.

7 I mean, there's no opinion that you hold that either side
8 needs to worry about, or you think --

9 **PROSPECTIVE JUROR MOORE:** No.

10 **MR. SPIRO:** Right? You don't -- you leave that at the
11 door and you're here to be fair and impartial?

12 **PROSPECTIVE JUROR MOORE:** Yes, sir.

13 **MR. SPIRO:** Okay. I appreciate that.

14 You know, one of the things that you all are going to see,
15 if you've never been through a case, is, you know, the judge is
16 going to instruct you that you have to keep an open mind.
17 Okay? And the plaintiff goes first. Right? They have the
18 burden of proof. Okay? So they get to go first. Wouldn't
19 want it any other way.

20 But some people, you know, they hear one side of the story
21 and they tend to make up their minds. Some jurors said it when
22 they were being asked questions, you know, things can be black
23 and white. Let's assume this isn't black and white. Okay?
24 Let's assume -- the defense is saying he's innocent, right?
25 They're innocent.

JURY VOIR DIRE

1 You know, what I need is an assurance that you can keep an
2 open mind. Right? A commitment that you can keep an open
3 mind. Because we don't get to decide which witnesses they call
4 when they're on direct examination. We don't control what
5 questions get asked. You are going to hear one side of the
6 story first. Does everybody understand the way that process
7 works? Right?

8 I don't know, you know, you are a 49ers fan, I take it?

9 **PROSPECTIVE JUROR YONAN:** Yes.

10 **MR. SPIRO:** Good win. I -- you know, some people, if
11 you're not even a -- you know, you're watching the game --
12 we've got a lot of sports fans here. You are watching a game
13 and you start rooting for one side. Even if you are not -- you
14 know, you just start -- people like to root for one side,
15 right? And they start seeing things in a certain way. In
16 sports like, right, you see a foul called, you say that's not
17 fair. And then you see another foul called and you say that's
18 not fair. And it sort of depends on which team you're rooting
19 for.

20 So what I'm asking you is it's just a commitment -- and
21 you've got to kind of have you to remind yourself, a commitment
22 to keep an open mind while the plaintiffs put on their case.
23 Can you give me that commitment?

24 **PROSPECTIVE JUROR TINAPAY:** (Inaudible)

25 **MR. SPIRO:** And I'm sort of looking because I know

JURY VOIR DIRE

1 we're short on time and everybody's -- it's towards the end of
2 the day and I don't -- I'm just sort of looking for an eye
3 contact, a head nod, sort of asking everybody to give me that
4 commitment. Can you give me that commitment?

5 And I'm looking at the first row and second rows, and even
6 deeper into the gallery. Okay, everybody can give me their
7 commitment that they will wait to hear all of the evidence and
8 keep an open mind?

9 (Heads nod)

10 **MR. SPIRO:** Okay. You know, because, you know,
11 they're going to stand up and say, you know, he's wrong, it's a
12 lie, it's fraud, it's bad. Right? And you're not going to get
13 to hear from me until after. They go first. But everybody's
14 telling me they can keep an open mind.

15 Okay. And, ultimately, I'm going to end sort of where I
16 started, which is, you know, some people have said, you know,
17 sort of less strong feelings about certain of the issues we've
18 been discussing all day. Right?

19 Some people write like in less strong, you know, ways
20 about people, right? They just say "I kind of feel," even
21 though they feel really strongly. Or they say, you know, "I
22 have not a strong opinion," when they really do.

23 And so all I'm going to say at the end is, you know, we're
24 here, you know, obviously, to give everybody a fair trial. You
25 know, it's really, really, really important that we get this

JURY VOIR DIRE

1 right. And if there's anything that anybody else needs to say,
2 or to tell the Court, whether it's now or one on one, that I --
3 that I -- all I can do is implore you to do that.

4 And I thank everybody very much for their attention today.
5 Thank you.

6 **THE COURT:** All right. Thank you, Mr. Spiro.

7 We're going to take a break, but --

8 **THE COURTROOM DEPUTY:** Your Honor?

9 **THE COURT:** Yes?

10 **THE COURTROOM DEPUTY:** We have a hand up over here
11 (Indicating).

12 **THE COURT:** Oh, there's a hand up. Yes.

13 **PROSPECTIVE JUROR GEOGHEGAN:** Do you need to have kind
14 of like a general understanding of the terms you guys are using
15 to be on this jury?

16 **THE COURT:** Okay.

17 **PROSPECTIVE JUROR GEOGHEGAN:** Like securities and
18 whatnot.

19 **THE COURT:** Okay. I'll answer your question, but if
20 you could state your name and number.

21 **PROSPECTIVE JUROR GEOGHEGAN:** Oh, sorry. I'm Allie
22 Geoghegan, Alicia Geoghegan, and I'm No. 60.

23 **THE COURT:** 60.

24 **PROSPECTIVE JUROR GEOGHEGAN:** Just because some of the
25 terms that are being said, I'm --

JURY VOIR DIRE

1 **THE COURT:** Yeah.

2 **PROSPECTIVE JUROR GEOGHEGAN:** I don't know anything
3 about securities.

4 **THE COURT:** Yes, I -- we don't expect you to have any
5 knowledge of securities or securities law.

6 **PROSPECTIVE JUROR GEOGHEGAN:** Great.

7 **THE COURT:** That's part of why we have trials, that
8 the parties will explain to you. I will give instructions.
9 I'm going to give -- once the jury is seated, I'm going to give
10 them an overview of what the legal structure is of this case.
11 It's just kind of a preview.

12 **PROSPECTIVE JUROR GEOGHEGAN:** Okay.

13 **THE COURT:** And then, yeah, there's probably a lot of
14 terms that you may not know. And unless you're a lawyer or
15 you're a broker or something, you may not. So we don't -- and
16 we're looking for -- that is why we do this. We call on
17 everybody from the public. We don't just ask for all the
18 people who are lawyers or who have a broker, or -- you know,
19 and so that's true of every case.

20 **PROSPECTIVE JUROR GEOGHEGAN:** Great.

21 **THE COURT:** So it is the job of the lawyers and this
22 Court to hopefully make things clear for you.

23 **PROSPECTIVE JUROR GEOGHEGAN:** Okay, perfect.

24 **THE COURT:** All right? Is there anybody else that
25 wants to say anything that -- or let me know of anything that

JURY VOIR DIRE

1 you haven't said that might be relevant to your ability to
2 serve in this case that you haven't already said?

3 Anybody else has anything else that we should know?

4 (Show of hands)

5 **THE COURT:** Okay. We've got a couple of hands. If
6 you could state your name and number again?

7 **PROSPECTIVE JUROR FITZPATRICK:** Hi, I'm No. 192, Ryan
8 Fitzpatrick.

9 **THE COURT:** 192. Okay. Let me --

10 **PROSPECTIVE JUROR FITZPATRICK:** And again, I'm not
11 sure if this is the right forum for this, but in listening to
12 what they have to say there and --

13 **THE COURT:** Yeah.

14 **PROSPECTIVE JUROR FITZPATRICK:** -- thinking through it
15 and being a part of this, I also don't feel that I can be an
16 impartial part of this process.

17 **THE COURT:** All right. And that's because of your
18 view of the parties --

19 **PROSPECTIVE JUROR FITZPATRICK:** Based on my specific
20 view of the parties, yes.

21 **THE COURT:** Okay. All right. All right. Thank you.
22 Anybody else?

23 (A hand is raised)

24 **THE COURT:** There's a hand raised over here.

25 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Jesus Bolivar,

JURY VOIR DIRE

1 113. My wife was able to get an appointment for passport as of
2 noon.

3 **THE COURT:** Oh. So you're good.

4 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Yeah, I just need
5 to pay late fees and spend a bunch of money, but, yeah, she'll
6 be able -- should go.

7 **THE COURT:** Well, it was worth it, sounds like, so
8 congratulations to both you and your wife. And your son.

9 How old is your son?

10 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Thirteen.

11 **THE COURT:** Great. Well, that's good news for all
12 around. So thank you. I was going to ask about that update.

13 **MR. APTON:** Your Honor?

14 **THE COURT:** Yes.

15 **MR. APTON:** In light of Mr. Bolivar's able to be
16 present, may I ask two questions?

17 **THE COURT:** Yeah, okay.

18 **MR. APTON:** Thank you. Thank you.

19 Mr. Bolivar, Adam Apton for plaintiffs. That's good news,
20 I appreciate that. Earlier today you intimated that you were
21 super excited to be here on the jury here, potentially, and I
22 just wanted to hear why that was.

23 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Should I stand up
24 or should I stay seated?

25 **MR. APTON:** Yeah, whatever you're more comfortable

JURY VOIR DIRE

1 with.

2 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** I recently became
3 a U.S. citizen in December. This is my first time to fulfill a
4 duty.

5 **MR. APTON:** Okay. So it's not because of any personal
6 feelings towards any of the parties in this case?

7 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Not really.

8 **MR. APTON:** Do you follow Mr. Musk on Twitter?

9 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** I do.

10 **MR. APTON:** Okay. How long have you followed him for?

11 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** No idea.

12 **MR. APTON:** Are you a recent fan, or are you a fan at
13 all, or no?

14 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Not really.

15 **MR. APTON:** And did you have any understanding of what
16 this case was about prior to today?

17 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** I follow him on
18 Twitter so I saw the tweet.

19 **MR. APTON:** When it came out?

20 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** I think so.

21 **MR. APTON:** Uh-huh. And so how do you anticipate
22 hearing evidence in this case if you are, in some sense, a
23 witness to the underlying events here?

24 **THE COURT:** Well, that's a misstatement.

25 **MR. APTON:** Oh.

JURY VOIR DIRE

1 **THE COURT:** He's not a witness. He's read about it,
2 heard about it or read something about it. So --

3 **MR. APTON:** About --

4 **THE COURT:** I think the question is, given your
5 knowledge and what you've read, will that influence your
6 ability to start this case on a clean slate and judge this
7 neutrally based on the evidence you hear solely in court?

8 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** I'll do my best to
9 base it only on the evidence that I see during the trial.

10 **THE COURT:** And when you say you'll do your best, are
11 you confident?

12 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** I am confident
13 that I'll do it.

14 **THE COURT:** Very confident?

15 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Yes, very.

16 **THE COURT:** Very confident.

17 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** I mean, after
18 seeing all the implicit biases, it's sort of like once you're
19 conscious of them, you're like, well, are we all really truly
20 biased?

21 **THE COURT:** That's a fair point. That's a fair point.
22 But now that you know there are such things as unconscious bias
23 and you've heard others talk about how they will struggle with
24 it, you are confident you can deal with that and --

25 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** I am confident I

JURY VOIR DIRE

1 can deal with that.

2 **THE COURT:** And be a neutral and impartial juror?

3 **PROSPECTIVE JUROR BOLIVAR SEGOVIA:** Yep.

4 **THE COURT:** Thank you.

5 **MR. APTON:** All right. Thank you. Thanks,
6 Your Honor.

7 **THE COURT:** Okay. Anybody else that has anything else
8 to share?

9 (No response)

10 **THE COURT:** Okay. And, just by chance, Juror No. 36,
11 Ms. Yonan, no more word from your boss?

12 **PROSPECTIVE JUROR YONAN:** (Shakes head)

13 **THE COURT:** Okay. All right. Then I think there is
14 one juror that we wanted to talk to individually and it's
15 No. 46. Is that right, Counsel?

16 **MR. SPIRO:** If the --

17 **THE COURT:** That it is the only one if we do?

18 **MR. SPIRO:** Yes. If the Court needs to talk to that
19 juror, yes.

20 **THE COURT:** Okay. Other than that, I believe we've
21 completed this process of questioning you and I want to thank
22 you for your forthrightness. Actually, it's been a very good
23 discussion. Makes me doubly glad that we do show that video,
24 because I think it stimulates some discussion and maybe some
25 insight, hopefully, for all of us.

JURY VOIR DIRE

1 So what I'm going to do at this point is take a break
2 because now the -- after we have a short session with Juror
3 No. 46, I have to meet with the lawyers and go through the
4 selection process. When you come back, it's my expectation
5 that we will have the list of jurors in this case. But it does
6 take a little bit of time. So, I'm going to give ourselves an
7 hour so you don't stand around waiting again. Sorry about
8 that. And I don't know if -- the cafeteria is probably not
9 open, unfortunately, but there are places around the courthouse
10 and you can use that second floor area to sit and relax, even
11 though they're not necessarily serving anything, but there's a
12 coffee place, there's -- there's a couple of coffee places
13 around here, actually, if you want. So, I appreciate your
14 patience. We'll see you back here in one hour, and Juror
15 No. 46, if you could just hang on for a minute and stay with
16 us.

17 **THE COURTROOM DEPUTY:** All rise for the jury.

18 (The following proceedings were held outside of the
19 presence of the jury venire, with Prospective Juror Magoulis
20 present)

21 **THE COURT:** Okay. Mr. Magoulis?

22 **PROSPECTIVE JUROR MAGOULIS:** Yeah, I'm here.

23 **THE COURT:** Oh, hi. Okay. I just wanted to give you
24 a chance to voice your views. Your questionnaire, you had said
25 some fairly extensive things about Tesla and Mr. Musk. And you

JURY VOIR DIRE

1 made a comment about he's embarrassed himself in software
2 engineering circles, resorts to name-calling, and, not very
3 impressed with the way he's running social media.

4 Do you want to just briefly elaborate on your views of
5 Mr. Musk?

6 **PROSPECTIVE JUROR MAGOULIS:** Um, I don't know how deep
7 you want me to go, because with Musk, it -- that rabbit hole
8 goes pretty deep.

9 **THE COURT:** Well, all right, before we get into the
10 details of the rabbit hole, let me ask you the bottom-line
11 question and that is, given how much you apparently know about
12 Mr. Musk and -- and have your views, which sound like they're
13 pretty strongly held views?

14 **PROSPECTIVE JUROR MAGOULIS:** I would say so.

15 **THE COURT:** Okay. You said that in your questionnaire
16 that you could still be a fair and impartial juror, but I -- we
17 want to explore that, obviously. Sitting here, as -- if you've
18 heard through this process how important it is that we find
19 jurors who can put aside prior views, knowledge, impressions,
20 and sit and hear the evidence kind of on a clean slate as best
21 you can, is that something that you think you can do? And if
22 you are, how confident are you?

23 **PROSPECTIVE JUROR MAGOULIS:** I mean, I would be
24 willing to give it a shot, but I -- I don't think it would be
25 fair to Mr. Musk to have me on the jury.

JURY VOIR DIRE

1 **THE COURT:** Okay. Sound like in the end you are not
2 that certain you could be fair.

3 **PROSPECTIVE JUROR MAGOULIS:** That's right, yeah. I
4 mean, there's also the billionaire factor, I'm not a big fan of
5 those, either, so...

6 **THE COURT:** Right. Unless you win the lottery, of
7 course.

8 **PROSPECTIVE JUROR MAGOULIS:** Of course, yeah.

9 **THE COURT:** All right. Let me ask the plaintiffs if
10 you have any follow-up questions.

11 **MR. APTON:** No, Your Honor.

12 **THE COURT:** Okay. From the defense?

13 **MR. SPIRO:** No, Your Honor.

14 **THE COURT:** All right. Thank you, Mr. Magoulis, I
15 appreciate it. Thank you for your honesty.

16 **PROSPECTIVE JUROR MAGOULIS:** Thank you.

17 (Prospective Juror leaves the courtroom)

18 (Off-the-Record discussion between the Court and Clerk)

19 **THE COURT:** All right, 131 has asked to speak to the
20 Court.

21 **MR. SPIRO:** Your Honor, I don't think we're going to
22 get -- just for the Court's awareness, I don't think, just
23 looking at the numbers --

24 **THE COURT:** Yeah, I don't think so either, but maybe
25 she wants to be relieved or something.

JURY VOIR DIRE

1 **MR. SPIRO:** Yeah.

2 **THE COURT:** Why don't we find out in case she has an
3 emergency or something.

4 **MR. SPIRO:** Always the Court's -- I'm just pointing
5 out that --

6 **THE COURT:** Yeah, we won't spend a lot of time with
7 her. You're right, we're not going to get to the -- I don't
8 think we'll get past around 80, is my guess.

9 **MR. SPIRO:** I don't think we're getting anywhere close
10 to 80.

11 **THE COURT:** Yeah.

12 (Prospective Juror enters the courtroom)

13 **THE COURT:** Hi, Ms. Suey.

14 **PROSPECTIVE JUROR SUEY:** Hello, Your Honor.

15 **THE COURT:** Hi.

16 **PROSPECTIVE JUROR SUEY:** How are you doing?

17 **THE COURT:** Good, how are you?

18 **PROSPECTIVE JUROR SUEY:** Good. I just wanted to bring
19 up to everybody that I cannot be one-sided about this case
20 because I had two very close friends of mine work at Tesla, and
21 one of them, um, was a case of racism, he was trying to get
22 promoted, and even though people who worked there that worked
23 there less than him got promoted before him, and they were
24 Caucasian.

25 And then another one of my friends that worked there, he

PROCEEDINGS

1 got hurt on the job, and even five years after to right now,
2 he's emotionally and mentally not the same. Because even when
3 he's hurting or just doing anything, trying to sleep, his back
4 is still in pain. The only thing that he can do is surgery but
5 his insurance doesn't cover it.

6 So I don't think that I can be -- take that out about --
7 my thoughts about Tesla, unfortunately.

8 **THE COURT:** Thank you for sharing that with us. I
9 understand. Thank you. Appreciate it.

10 **PROSPECTIVE JUROR SUEY:** Thank you.

11 (Prospective Juror leaves the courtroom)

12 **THE COURT:** Okay. So what I would like to do is go
13 through in sequence the ones that are in play, and you tell me
14 if there's a challenge for cause or hardship. I think we have
15 done the hardships. So let's see where we're at.

16 First in play is Juror No. 3, Tinapay, any objection --
17 any challenge?

18 **MR. APTON:** Nothing from plaintiff, Your Honor.

19 **MR. SPIRO:** No, Your Honor.

20 **THE COURT:** Okay. Juror No. 4, Martinezal.

21 **THE COURTROOM DEPUTY:** It's Martinez.

22 **THE COURT:** Martinez?

23 **THE COURTROOM DEPUTY:** Yeah, they combined the letters
24 together.

25 **THE COURT:** Oh, Martinez. Okay. Any challenge?

PROCEEDINGS

1 **MR. APTON:** No, Your Honor.

2 **MR. SPIRO:** No, Your Honor.

3 **THE COURT:** Okay. No. 6, Rickard?

4 **MR. APTON:** Nothing from plaintiff, Your Honor.

5 **MR. DEF3:** No, Your Honor.

6 **THE COURT:** Okay. That brings us to the next one I
7 have is No. 32, Sharma.

8 **MR. APTON:** Nothing from plaintiff, Your Honor.

9 **MR. SPIRO:** No, Your Honor.

10 **THE COURT:** Okay. Then, we still have No. 36, who's
11 the one who now with this Ross assistant manager going out,
12 could be a problem.

13 **MR. APTON:** Your Honor, I would say we have more than
14 enough jurors, probably, let's let her go.

15 **MR. SPIRO:** Yeah. Your Honor, that's obviously not
16 the standard for hardship and we would object. And she's not
17 indicated anything that's -- rises even close to hardship.
18 She's suggested no economic hardship. She's a managerial-level
19 individual. She doesn't even know that she won't get paid. In
20 fact, I think working for a corporation like that, she likely
21 will. Even if she weren't for a short period of time, there is
22 no indication that that would be a hardship. We don't know
23 that she can't just -- in fact, she indicated she could go in
24 at 2:00 or 2:30 or 3:00 and work a later shift potentially. So
25 we clearly do not have sufficient information to excuse a juror

PROCEEDINGS

1 such as this for hardship and that's the only question, I take
2 it, and we would, of course, object because we don't think
3 there's any basis to do that.

4 **MR. APTON:** Your Honor, she said she can't do it. She
5 said that she needs to be at work. She said that she can't get
6 necessarily from here to work in the time she needs to. She
7 was going to do this before but now that her manager is out,
8 she has a clear problem and we need to sit a jury.

9 **THE COURT:** All right. I'm going to excuse her
10 because of the emergent situation at her work. The fact also
11 that there's -- she didn't say she gets jury pay and it's not
12 clear that all retailers provide --

13 **MR. SPIRO:** Your Honor, the defense objects.

14 **THE COURT:** Yeah, your objection is noted. Overruled.
15 39, any objection?

16 **MR. APTON:** No, Your Honor.

17 **MR. SPIRO:** No, Your Honor.

18 **THE COURT:** Okay. 40, any objection?

19 **MR. APTON:** No, Your Honor.

20 **MR. SPIRO:** No, Your Honor.

21 **THE COURT:** 45?

22 **MR. APTON:** No, Your Honor.

23 **THE COURT:** Mr. Buckley.

24 **MR. SPIRO:** No, Your Honor.

25 **THE COURT:** Okay. Mr. Magoulis is -- I think we'd

PROCEEDINGS

1 agree, he's -- can't -- he's not eligible to serve. Challenge
2 for cause, I assume?

3 **MR. APTON:** That is correct, Your Honor.

4 **THE COURT:** Is that right?

5 I'm going to sustain that. I assume everybody agrees?

6 **MR. SPIRO:** Yes, Your Honor.

7 **THE COURT:** Okay. No. 50, the night-shift nurse, not
8 sure about jury -- oh, he did find out about jury pay but it's
9 less, it's not totally compensatory.

10 **MR. APTON:** So, Your Honor, in this situation he said
11 he could do it. He's clearly -- I think he prefers not to, but
12 I would defer to the Court on this.

13 **MR. SPIRO:** Your Honor, I -- again, I'm -- these
14 comments, I don't -- I just want the record to be clear. I
15 don't see any -- I see less of a difference, frankly, from the
16 juror that we just excused. This seems to be far greater of a
17 case of hardship and we -- we have inquired far more, so I
18 don't --

19 **THE COURT:** Okay. I'm going to excuse Juror No. 50.
20 I think there's both a hardship in terms of his hours and
21 having to work after 12-hour shifts, that's going to be very
22 difficult. Plus he's not getting full compensation for jury
23 pay because it's based on some percentage and he's losing out,
24 and for him to lose out over a three-week period is a financial
25 hardship, so he's excused.

PROCEEDINGS

1 No. 55?

2 MR. APTON: I have no objection, Your Honor.

3 MR. SPIRO: No objection.

4 THE COURT: Okay. Number 57, Cazessus?

5 MR. APTON: Yolanda Cazessus. No objection,
6 Your Honor.

7 THE COURT: Cazessus. Okay.

8 MR. SPIRO: No objection, Your Honor.

9 THE COURT: All right. No. 59, Mr. Xi.

10 MR. APTON: No objection from plaintiff, Your Honor.

11 MR. SPIRO: No objection.

12 THE COURT: Okay. No. 60, that's the one who doesn't
13 have childcare on Monday and I said I would reserve questioning
14 on that. What is your final view?

15 MR. SPIRO: This was a juror that we both agreed to
16 move to the end, Your Honor.

17 THE COURT: Oh, we did? Okay.

18 MR. SPIRO: Yeah.

19 THE COURT: That's not -- then she's irrelevant. So
20 far.

21 Juror No. 67.

22 MR. APTON: No objection, Your Honor.

23 MR. SPIRO: No objection.

24 THE COURT: Okay. Juror No. 68, Ms. Daing, or
25 Mr. Daing.

PROCEEDINGS

1 **MR. APTON:** Your Honor, I do think this juror has a
2 hardship. I think he has expressed his reservations with kind
3 of being incommunicado with his staff, his employees, his wife.
4 It's a problem.

5 **THE COURT:** Comment?

6 **MR. SPIRO:** We didn't excuse him for hardship earlier.
7 This was well-addressed and he said he could be here and is
8 fine. It's clearly not a hardship.

9 **THE COURT:** All right. I'm not going to excuse him.
10 He said he could live with his phone being off for 90 minutes.
11 Seems to me that was the key, and so I'm not convinced that he
12 has presented a sufficient hardship to be excused. So any
13 objection to him or challenge to him is overruled.

14 73, Cadogan.

15 **MR. APTON:** No objection from plaintiff.

16 **MR. SPIRO:** No objection.

17 **THE COURT:** 74, Ms. Bransfield.

18 **MR. APTON:** No objection, Your Honor.

19 **MR. SPIRO:** No objection.

20 **THE COURT:** And 79, Mr. McGown.

21 **MR. APTON:** No objection, Your Honor.

22 **MR. SPIRO:** No objection.

23 **THE COURT:** Well, I count 15. So let me go through
24 who they are, I think. No. 3, Tinapay; No. 4, Martinez; No. 6,
25 Rickard; No. 32, Sharma; No. 39, Marshall; No. 40, Harris;

PROCEEDINGS

1 No. 45, Buckley; No. 55, Moore; No. 57, Cazessus; No. 10, Xi --
2 I'm sorry, not No. 10, that's No. 58. Number 67, Torres
3 Rosado; No. 68, Daing; no. 73, Cadogan; No. 74, Bransfield; and
4 No. 79, McGown. I get 15. Do you all agree?

5 **MR. APTON:** Yes, Your Honor.

6 **MR. SPIRO:** Yes, Your Honor.

7 **THE COURT:** All right. Well, then we have our top 15
8 from which you can exercise your three peremptories each.
9 Plaintiff starts, and then peremptory 2 and 3 go to the
10 defense, and -- no, 1 and 2 go to the -- they're 1 and 2 and
11 then 2 and 3 back to the plaintiff, and then the third one on
12 the defense. If there's -- and you can save it, you don't lose
13 it if you don't use it, but if you don't use it and the other
14 side passes, that's it.

15 I -- I will say this much. This is a fairly diverse pool
16 that we have, which I'm pleased because we don't always get
17 diverse pools.

18 And let me just say, I hope there's not going to be a
19 *Batson* issue. I do keep an eye on these things. So just a
20 word to the wise that I don't want to have to cross that
21 bridge.

22 So, we'll pass the sheet around and give you, I don't
23 know, 20 minutes? Something like that?

24 **MR. SPIRO:** I'm ready now, Your Honor.

25 **THE COURT:** Pardon?

PROCEEDINGS

1 **MR. SPIRO:** We're ready now.

2 **THE COURT:** Then -- I meant 20 minutes to pass the
3 sheet back and forth. I don't -- I don't -- we can take it
4 orally, but I do it --

5 **MR. SPIRO:** Oh, oh.

6 **THE COURT:** I just do it by sheet. They get the sheet
7 and give it to you and --

8 **MR. SPIRO:** I see. That sounds good.

9 **THE COURT:** -- I give you 20 minutes to pass it back
10 and forth. Okay?

11 **MR. APTON:** Thank you, Your Honor.

12 **THE COURT:** Thank you.

13 **THE COURTROOM DEPUTY:** Court is in recess.

14 (Recess taken from 2:12 p.m. to 2:39 p.m.)

15 (The following proceedings were held outside of the
16 presence of the jury venire.)

17 **THE COURTROOM DEPUTY:** Please remain seated, Court is
18 back in session. Court is reconvened.

19 **THE COURT:** All right. I have your strikes, and let
20 me just make sure I got them all here.

21 Okay. Plaintiffs strike Juror No. 39, Mr. Marshall.
22 Correct?

23 **MR. APTON:** Correct, Your Honor.

24 **THE COURT:** And defendants strike No. 40, Ms. Harris.
25 And 79, Mr. McGown.

PROCEEDINGS

1 And the plaintiffs challenge -- or strike No. 74,
2 Ms. Bransfield.

3 Let me make sure I've got -- and then, challenge No. 68,
4 Mr. Daing. And then the final strike from the defendant is
5 No. 45, who is Mr. Buckley.

6 So that leaves the following: Jurors No. 1, Tinapay;
7 No. 2, Martinez; No. 3, Rickard. And the fourth juror is
8 No. 32, Sharma. The fifth is No. 55, Mr. Moore. The sixth is
9 Ms. Cazessus. The seventh is Mr. Xi. And the eighth is Mr. or
10 Ms. -- Mr. Torres Rosado. And the last one is Mister -- is
11 Juror No. 73, Mr. Cadogan. Do I have that right?

12 **MR. SPIRO:** Yes, Your Honor.

13 **THE COURT:** Do you all agree? Okay. Excellent. So
14 before we call the jurors in, given the time, it's going to be
15 a little bit of a stretch to seat the jurors, get them sworn,
16 and for me to instruct. I have to give some instructions, that
17 will take about 15 minutes. It's going to be past the 3:00
18 hour. So if I knew that you were going to confine your
19 statements to 20 minutes, 25 minutes, we could do it.
20 Otherwise, maybe I should just instruct and start with argument
21 -- not argument, opening statements, first thing tomorrow
22 morning.

23 **MR. SPIRO:** I think that makes the most sense,
24 Your Honor.

25 **MR. PORRITT:** We would agree, Your Honor.

PROCEEDINGS

1 **THE COURT:** All right. Let me ask you before I
2 instruct, there was a renewed objection. The one I'm
3 interested in is the footnote in the defense objection about
4 the issue of scienter and whether or not indicating -- I'm not
5 sure what you were indicating but it seemed like you were
6 indicating you would consider waiving any argument that
7 scienter requires knowing, and that if it doesn't require
8 knowing, then I've already found scienter, and, therefore, that
9 might obviate some instructions on that, although that doesn't
10 answer the question what about apportionment.

11 But let me just hear the first part, make sure I
12 understand. Because you sort of said that, and then you also
13 said we're not waiving our rights under matrix.

14 **MS. THOMPSON:** Yes, Your Honor. So we were picking up
15 on a line on Page 43 of the Court's final jury instructions in
16 which the Court said, um, in any event, the jury should still
17 be instructed as to scienter because if it's knowing -- there's
18 this open question under Supreme Court case law as to whether
19 scienter must be knowing, and the Court has only found
20 reckless.

21 And I think there were some interpretation on our side
22 that perhaps the Court was inviting us to say, well, if we're
23 no longer -- you know, if we waive our arguments as to scienter
24 must be knowing, then the Court would be inclined not to give
25 any scienter instruction, not to instruct the jury to assume

PROCEEDINGS

1 recklessness, and to take that out entirely, you know, making
2 it a securities fraud claim that doesn't require scienter
3 because that would just be removed entirely from the jury's
4 consideration.

5 I think that is something that may make sense here given
6 the prejudice from the recklessness instruction that, you know,
7 we have asserted. But I do think that we wanted to be assured
8 that that was not, you know, now defendants concede scienter
9 entirely, an instruction of that to the jury. But rather, the
10 issue is just removed entirely from the jury's consideration.
11 The instructions are removed as to scienter, as to reckless, as
12 to imputation of scienter.

13 On apportionment, I think there's a way that the
14 instruction can be done such that the question is anyone you
15 found liable. And then as to anyone you found liable, have
16 you -- have you found knowing as to, you know, X, Y, Z, as, you
17 know, the directors or whatnot.

18 So I think there is a way to do it where that is removed
19 entirely from the jury's consideration. That would, yes, waive
20 arguments as to requiring knowledge for scienter, and also our
21 exception as to requiring recklessness as to materiality, which
22 the Court has rejected. But to obviate the prejudice that
23 would be caused by instructing the jury they're to assume
24 recklessness, we think that on our side that makes sense to
25 remove it from the jury's consideration entirely, since the

PROCEEDINGS

1 Court has found that element met since the jury will not be
2 instructed that recklessness requires scienter as to -- or,
3 sorry, that scienter requires recklessness as to materiality.

4 **THE COURT:** All right. Response?

5 **MR. PORRITT:** I would, first of all, preface my
6 remarks by saying this is a very late-hour kind of radical
7 restructuring, removing an entire instruction which is present
8 in every securities case, and is contained in the model
9 instruction. And I think it would have implications beyond
10 simply just on the scienter instruction.

11 We would then want -- we would want to look at how that
12 played through. It's such a central concept, we'd want to see
13 how that plays through the other instructions.

14 I think if you were going to remove the scienter
15 instruction, I think you would need a specific, custom-made
16 instruction for this case. Essentially, it's telling the jury
17 that if you find that the two tweets -- either of the two
18 tweets were material, then you must find Elon Musk liable.

19 So, if the defendants are willing to stipulate to such an
20 instruction, then, you know, but I think that is now getting so
21 far beyond where we are and what we've been talking about, I
22 don't understand their argument and I think it's really a
23 little bit late in the game, unless we can meet and confer and
24 agree upon -- agree upon a set of instructions along those
25 lines, but which I'm not optimistic we could do that, to be

PROCEEDINGS

1 honest, Your Honor.

2 So I would leave the instructions as they are. I think it
3 is a very novel, new approach that the defendants have proposed
4 and it's very difficult at this late hour. We have
5 well-developed and kind of integrated instructions that we've
6 had numerous conferences with, to now suddenly start taking out
7 very central ones. And I think it does have implications for
8 other instructions such as apportionment, such as knowing
9 violation, all those sorts of things. So we'd have to
10 deconstruct the scienter and then reinsert it where it makes
11 sense. And it just seems a little bit too radical surgery to
12 be doing this late.

13 **MS. THOMPSON:** If I may briefly respond, Your Honor.
14 I know it's late.

15 **THE COURT:** Yeah.

16 **MS. THOMPSON:** First of all --
17 (Reporter clarification)

18 **MS. THOMPSON:** Yes, sorry. Ellyde Thompson for the
19 defendants. Thank you.

20 First of all, as to the time of this, of course, the issue
21 that led to this is that there can be no Tesla scienter.
22 Absent Elon Musk scienter, there is no separate theory of
23 scienter for Tesla, which is what led to this. Otherwise, this
24 certainly would have been raised earlier.

25 And the second point is there may be perhaps a way to give

PROCEEDINGS

1 the parties and the Court more time to assess this, because
2 really what the Court is going to be giving now is the 10b-5
3 preliminary instruction. I do think that there would have to
4 be a tweaking of the elements there, and removing reckless, the
5 you are to assume reckless. But otherwise there certainly
6 would be time to modify the other instructions to
7 incorporate -- you know, to incorporate the removal of the
8 scienter aspect from the jury's determination.

9 **MR. PORRITT:** Well, it would obviously -- sorry,
10 Your Honor. It would obviously be highly prejudicial to remove
11 the instruction on the finding of the Court on summary judgment
12 that Mr. Musk acted recklessly when he issued the tweet to then
13 remove it from the initial instruction. That's been a baffle
14 along. Obviously, defendants have done their best to
15 obliterate your summary judgment order from history, and
16 certainly from these jury instructions. So -- and this is,
17 once again, an ongoing sort of campaign --

18 **THE COURT:** Well, here's what I want to do. I'd like
19 you to meet and confer to really think through this
20 possibility. Because if there's a stipulation, essentially it
21 would be a stipulation as to scienter. We wouldn't have to get
22 into the dichotomy between knowing and reckless disregard,
23 because the only reason why that is relevant, putting aside
24 apportionment for a minute, is because of the outstanding case
25 law and the Supreme Court's reserving the question whether

PROCEEDINGS

1 reckless disregard is enough. And if we don't know that for
2 sure, we want the jury to opine.

3 Now, if there is a's stipulation that whatever the Supreme
4 Court may do and revisiting the *Matrixx* question, that's a
5 waiver. They've essentially -- then the defendants will have
6 essentially waived any opposition to a finding of scienter,
7 period. We don't have to get into it. And then the
8 instruction could be simplified, just like we said that the
9 jury is to find that the statement was inaccurate, we can also
10 say that the -- and we don't have to describe scienter or break
11 it down between reckless disregard and knowingly. It's
12 irrelevant to the jury. We just say that scienter and state of
13 mind, that's not an issue for you, jury. And then, but the
14 issue for you -- then it's going to be highlighted, it's going
15 to be all the other elements: Reliance, materiality,
16 et cetera, et cetera.

17 And -- and the -- that would obviate a jury instruction on
18 scienter, state of mind. You'd simply say that you need not
19 address this issue or something to that effect.

20 I mean, that's what it would look like in my mind if you
21 were to stipulate to something like that. And how the
22 apportionment -- I mean, unfortunately, because the
23 apportionment, that doesn't obviate all the evidence about
24 Mr. Musk's state of mind because it's still going to be
25 relevant, but they won't be instructed on that on the

PROCEEDINGS

1 substantive 10b-5, it only comes in on the back end on the
2 apportionment question.

3 **MR. PORRITT:** And, Your Honor, I think it would just
4 be very unmanageable in terms of the evidence. I think we --
5 you're going to end up buying an awful lot of relevance
6 objections now about that's really only to scienter or
7 recklessness or does it go to knowing.

8 **THE COURT:** Well, I just said I think it is -- the
9 evidence will still come in because state of mind is relevant.
10 It's on the apportionment question.

11 **MR. PORRITT:** And I just have a very difficult time
12 thinking about how this is going to be managed in the trial in
13 real time and whether the jury -- we already heard today a
14 juror being confused on what is, in fact, a much more simpler
15 assumption, that the statements were untrue. We had one juror
16 with a colloquy with Mr. Spiro about, I thought, demonstrating
17 quite severe confusion on that point. And so, once we get to
18 state of mind, I think it's also a real risk about how we
19 manage this and the evidence coming in. I just think this is
20 far more --

21 **THE COURT:** My preliminary view is that it would still
22 come in because it's still relevant. It's relevant on the
23 apportionment question. So you don't have to change your
24 evidence, but the instruction --

25 **MR. PORRITT:** But the jury -- sorry, Your Honor, I

PROCEEDINGS

1 didn't mean to interrupt. Sorry. I think the jury may end up
2 being really confused as to how they're meant to weigh that
3 evidence and what the use they're meant use of it and all those
4 sorts of -- and those sorts of issues.

5 **THE COURT:** Well, frankly, there are a lot of trials
6 when we start -- don't give any instructions on the law and
7 they've got to -- you know, they are going to be confused about
8 all sorts of things. And part of it is your job on openings to
9 provide that so-called roadmap. But --

10 **MR. PORRITT:** And we've -- I've done -- you know, I
11 think I've done and I hope Mister -- but, you know, I was
12 having -- already having concerns about the extent to which,
13 after listening to the -- some of their questioning today with
14 Mr. Spiro is exactly how they are going to -- defendants are
15 going to be talking in their opening about your summary
16 judgment order, and there did seem to be already invitations to
17 re-litigate the question of falsity.

18 **THE COURT:** All right. Well, let me ask.

19 **MR. PORRITT:** And so --

20 **THE COURT:** I'm hearing you're not going to get a
21 stipulation from the other side. That doesn't necessarily
22 prevent you from filing a -- something with the Court, stating
23 that you are waiving the *Matrixx* knowing potential argument and
24 asking the Court to adjust the instructions with or without the
25 help of the plaintiff.

PROCEEDINGS

1 But if you are going to do that, I need to know that,
2 like, soon.

3 **MS. THOMPSON:** Yes, Your Honor. I think -- I mean,
4 we're happy to meet and confer, although perhaps we will not
5 find agreement on that. Perhaps we can meet and confer sort of
6 in the alternative, if -- if the Court is, you know, it seems,
7 willing to consider this, how would you like this to be
8 phrased? Would you like it this way, such that you're not done
9 giving exceptions to what we propose, if we can agree on that.
10 But I think there is time to get that done. The main issue is
11 just not jumping the gun and instructing the jury, you know,
12 today or tomorrow in the preliminary statement in a way that
13 obviates the ability of the Court to streamline the issues that
14 the jury needs to decide.

15 **THE COURT:** Well, the only reference in the opening
16 statement -- in the opening statement -- in the opening
17 preliminary instruction is the Rule 10b-5 claim that lays out
18 the five elements. I intend to set that out. What I would do
19 is take out the i.e., the parenthetical, just simply say that
20 Elon Musk or Tesla acted with necessary state of mind, and not
21 saying anything more. I'm ticking off the five elements, so
22 it's not committal. So if you decide to stipulate, then that
23 can be stated in opening statements. That'll be -- that'll be
24 clear in the closing instructions. But I'm not going to just
25 delete that now, without --

PROCEEDINGS

1 **MS. THOMPSON:** Yes -- yes, Your Honor. But then I
2 guess the question is deleting the "you are to assume," yeah --

3 **THE COURT:** I won't say anything right -- no, I'm not
4 going to touch the "you are" -- the things that I already said
5 they're going to assume, I've already found, I'm keeping the
6 "you are to assume." So if you're using this to try to remove
7 every single reference to every single element, the answer is
8 no, I'm not going to revisit it.

9 I'm not going to add, because there's no stipulation, "you
10 are to assume that Mr. Musk or Tesla acted" -- I guess it's
11 just Mr. Musk in this case -- "with the necessary state of
12 mind." I'm not going to give that because there's no such
13 stipulation at this point. I'm just not going to say anything
14 about that.

15 **MS. THOMPSON:** Right. And I think part of the reason
16 we were raising this is, again, you know, we understand and
17 appreciate the Court's attention on this issue. But having the
18 Court instruct that the jury's to assume recklessness we think
19 is prejudicial. We're looking for a way to obviate that
20 prejudice.

21 **THE COURT:** Well, --

22 **MS. THOMPSON:** The Court has suggested a way --

23 **THE COURT:** -- I am giving it and there's one way to
24 obviate that, and that is -- I mean, I still have to say that
25 you are to assume that the scienter requirement is -- has been

PROCEEDINGS

1 met.

2 **MS. THOMPSON:** Right, and I think there --

3 **THE COURT:** We don't have to get into the details and
4 use the word -- if your concern is using the word "reckless
5 disregard," that may be. If you're stipulating, or at least
6 conceding, that scienter is met, then the jury doesn't have
7 to -- they don't have to know whether it's reckless disregard
8 or knowing, it's just met.

9 **MR. PORRITT:** As with falsity, Your Honor. So, I
10 mean, it's going to change the verdict form.

11 **THE COURT:** Yes.

12 **MR. PORRITT:** As with falsity, it would change the
13 verdict form because at the moment they're asked to say it's in
14 the context of a 10b-5 Claim.

15 **THE COURT:** Yes.

16 **MR. PORRITT:** So we would have to radically change the
17 verdict form. And again, we would intentionally -- it would
18 become a trial on materiality, Your Honor. So if they are
19 willing to stipulate that if the jury finds it's material, then
20 all elements of the claim are essentially met, that's -- but
21 that's a very different set of instructions than what we
22 currently have.

23 **THE COURT:** Well, it --

24 **MR. PORRITT:** So --

25 **THE COURT:** I think it can be redone. I'm not --

PROCEEDINGS

1 that's not -- I'm not intimidated by that, but I'm not going to
2 do anything without a clear decision.

3 **MR. PORRITT:** I mean, if defendants are going to
4 stipulate that the only issue in doubt really is materiality,
5 and if we establish --

6 **THE COURT:** Well, there's reliance, there's damages,
7 there's --

8 **MR. PORRITT:** All of which are -- all of which
9 governed by materiality, Your Honor, essentially. So --

10 **MS. THOMPSON:** Again, I think probably the -- the
11 easiest way to do this is to remove the "You are to assume
12 recklessness" from the preliminary instruction and then the
13 parties can confer, and absent agreement, defendants can put
14 forth a proposal. I do think this would streamline, you know,
15 first of all, the instructions that the Court needs to give the
16 jury at the end of the day, and also the issues that the jury
17 needs to decide.

18 But, for now, our only request is to simply preserve the
19 ability of defendants to make that decision as to waiver if the
20 instructions can be done in a way that we think sufficiently
21 removes the issue from the -- from the jury by not instructing
22 in the preliminary instruction today or tomorrow morning, as
23 to -- as to "You are to assume recklessness."

24 **THE COURT:** So it's the last paragraph of the
25 preliminary instruction.

PROCEEDINGS

1 **MS. THOMPSON:** Yes, Your Honor.

2 **THE COURT:** That you would want removed because it may
3 be that you stipulate to and we wouldn't get into the term
4 "reckless disregard" or "knowing"?

5 **MS. THOMPSON:** Yes, Your Honor.

6 **THE COURT:** When will you be making your decision?

7 **MS. THOMPSON:** Well -- well, we -- we can make it on
8 the timeline the Court gives us, but we do need to just confer
9 not only with the client, but also how the other instructions
10 fall out if that scienter element is removed.

11 **THE COURT:** Well, I can tell you without having gone
12 through it line by line, my intent is if there is a stipulation
13 that scienter has been met, I would change the "You are to
14 assume -- "You are to assume that Mr. Musk acted with the
15 necessary state of mind," without saying anything more, as well
16 as assuming that the statement was not true.

17 I would remove, as a result, I think, the instructions on
18 scienter and state of mind, since it's already been found, and
19 maybe say something like "You need not determine scienter," or
20 "You need not resolve that question. You are to assume that
21 that element has been met." And we would remove probably the
22 imputation -- well, let's see. Scope of authority is still --
23 you haven't stipulated to that, or would you stipulate to that?

24 **MS. THOMPSON:** No, no, Your Honor. No.

25 **THE COURT:** Okay. So that -- we still have to give

PROCEEDINGS

1 the imputation, so that one would be still there. But
2 scienter, you know, again, we'd say that "You should assume
3 that scienter on Mr. Musk's part has been met." Then the
4 question is can you impute that to Tesla, and that depends on
5 scope of authority. And I think those are the main --
6 that's -- I think that's where it comes out. I mean, we'd have
7 to look at it, but those are the --

8 **MR. PORRITT:** Yeah, I would want to review in a bit
9 more detail, Your Honor, on the -- I just didn't have a copy of
10 the -- of those jury instructions with me sitting here right
11 now.

12 **THE COURT:** And we'd have to change the verdict form,
13 obviously.

14 **MR. PORRITT:** I think it would be very dangerous,
15 Your Honor, in terms of trying to them to under -- for the jury
16 to understand and make sure that they are properly instructed
17 by removing an element of the claim from -- seemingly from the
18 instructions altogether, without -- without more of a
19 stipulation or more of a concession or admission on behalf of
20 defendants, about what that actually means.

21 And I think using the word "scienter" I think is just very
22 dangerous on behalf of the jury -- I mean --

23 **THE COURT:** Well, I'll say "necessary state of mind."
24 That is the wording of the instruction.

25 **MR. PORRITT:** But I think, getting an understanding of

PROCEEDINGS

1 the conduct that's at issue here, you need an element of
2 recklessness or intent. I think they need to understand that
3 it's a fraud claim, and that this is their finding him liable
4 for fraud --

5 **THE COURT:** I think the issue is materiality and
6 reliance. I'm not sure why you need to know whether he acted
7 recklessly or knowingly in that regard.

8 **MR. PORRITT:** If they -- if we are limiting this --
9 the only issues to be decided by the jury for the 10b-5 claim
10 are issues of materiality and reliance and it is clearly set
11 forth in the instructions and as clearly set forth in the jury
12 form, which is, again, very different than what is currently
13 presented, then, you know, that's something we can -- I can't
14 concede it sitting here today because it's such a big change
15 and it's just been proposed, but that's -- you know, that
16 would -- I think that's where you end up having to go. That is
17 the logical end point of where we're going right now, which is
18 dramatically slimmed-down set of instructions, a dramatically
19 slimmed-down verdict form. A very different verdict form.
20 And, so that is where I think where would be -- where would we
21 be going on this. So -- that's where we are.

22 So, I mean, maybe we need to fully understand what exactly
23 defendants are proposing in this. And again, you know, because
24 doing this, you know, our goal was to be making opening
25 statements right now. And, so these instructions would have

PROCEEDINGS

1 already been given and now this, so you say, well, a radical
2 proposal has just been made.

3 **MS. THOMPSON:** And, Your Honor, I just -- I wanted to
4 say of course the goal is to slim down. I think the Court
5 would be happy to slim down the issues for the jury and to slim
6 down the verdict form. And if it can be done in a way that
7 just sort of removes the element from the jury's consideration,
8 and from defendant's perspective removes the sort of idea that
9 the jury has been instructed as to recklessness, and the very
10 first thing that the jury hears removes that prejudice, I think
11 that would be the benefit that defendants would be looking for.

12 **MR. PORRITT:** And just one question, Your Honor. If
13 you were to do that, I mean, would that mean that, in, say,
14 openings or in closings, you're not able to even reference the
15 idea of scienter? You could not say they have stipulated that
16 he acted recklessly?

17 Would that be something that I would be unable to say?

18 **THE COURT:** I -- well, one thing you could stipulate
19 to is you can just say that with respect to the element of
20 state of mind, there was an agreement that that's been met
21 here. I don't think you have to use the word "reckless,"
22 "knowing."

23 **MR. PORRITT:** Well, with respect, Your Honor, I think
24 defendants -- the jury should know exactly the level of conduct
25 that they have stipulated has occurred here. So I think that

PROCEEDINGS

1 plays into their assessment of the facts, it goes into
2 assessment --

3 **THE COURT:** Well, you will be able to argue that in
4 the context of apportionment, knowing -- knowing -- knowing --

5 **MR. PORRITT:** I mean, it certainly goes into
6 credibility determinations the jury is going to make. If the
7 witness is there who has agreed, stipulated that he acted
8 recklessly in issuing a false tweet, that's something, I think,
9 the jury can -- should understand or should know when they're
10 assessing his credibility when he sits there and assume he
11 argues that, in fact, it was not misleading and it was, in
12 fact, true or whatever he's going to say under oath.

13 **MS. THOMPSON:** And, Your Honor, this is part of the
14 reason why we want to remove this entirely from the case. It's
15 because plaintiff is not looking to simply inform the jury that
16 this element is met. They're looking to use it in a
17 prejudicial way, just like in the opening slide deck that they
18 submitted that had the Court's summary judgment order all our
19 over it. What they're looking for is a prejudicial effect and
20 not simply that the Court decided this element. And what would
21 be proper is for the Court to remove that from the jury's
22 consideration, and remove that likely prejudice from the case.

23 **MR. PORRITT:** Well, obviously, it's prejudicial when
24 you lose a major element of a claim against you. So, that's
25 the prejudice. It's this -- there's prejudice and undue

PROCEEDINGS

1 prejudice, and I don't think this is an undue prejudice.

2 **THE COURT:** Well, I want you to meet and confer and
3 see if you can come up with something. I have to decide.

4 You want me to strike any reference to the term "reckless
5 disregard"?

6 **MS. THOMPSON:** (Nods head)

7 **THE COURT:** And you're saying that by stipulating,
8 that would obviate the need to get into it. They're saying
9 that even if it's not an element of the 10b-5, it's -- it is
10 relevant to credibility -- you know, I guess what you are
11 saying is what's relevant to credibility is that there has
12 been a stipulation that or a finding that.

13 And, in other words, you are to assume -- not referring to
14 any -- you are to assume that he acted -- they want you not to
15 say those words --

16 **MR. PORRITT:** Agreed, Your Honor.

17 **THE COURT:** -- essentially.

18 **MR. PORRITT:** Which means, essentially, we have to
19 prove it all over again if we're not getting the benefit of the
20 finding. We would have to show that he acted recklessly in
21 order for the jury to then understand, so we end up
22 re-litigating -- in an essence, we end up almost re-litigating
23 the whole element of scienter just so the jury understands the
24 exact nature of the conduct. Unless we make this a scientific
25 trial, just on materiality, and we have -- we'll put up the two

PROCEEDINGS

1 experts, we'll send it to the jury and we'll be done in two
2 days.

3 **MS. THOMPSON:** Well --

4 **THE COURT:** All right, here's what we're going to do
5 today. Then I'm going to think about it. I want to get the
6 jury seated, want them sworn, I want to give these
7 instructions, I want to get this out of the way so at least
8 they understand. I'm going to give the 10b-5 instruction, but
9 I'm not going to -- I'm going to leave it more general as the
10 second element is that Elon Musk and/or Tesla acted with the
11 necessary state of mind.

12 At this point, since it's just opening, a big preliminary
13 instruction, I won't say anything about the "assume" part
14 because I haven't resolved that question. I am going to keep
15 the part about that these were untrue. You're to assume that
16 the statements were untrue. And since I'm not, you know,
17 elaborating on what state of mind is or necessary state of
18 mind, and it's just one of several elements, that leaves the
19 door open.

20 And then if there is a stipulation, then I will tell you
21 will what I'm going to do tomorrow morning first thing and then
22 you can fashion your arguments accordingly. And -- and, of
23 course, obviously, then the instructions will reflect it if I
24 do make any kind of change. But that decision has to be made,
25 pronto.

PROCEEDINGS

1 **MR. PORRITT:** Okay.

2 **MS. THOMPSON:** Yes, Your Honor.

3 **THE COURT:** And I'm not -- and I'm not -- you know, I
4 need to think about this question that Mr. Porritt has raised
5 and that is the words "Reckless disregard," because there was
6 such a finding, that -- that assumption, the fact that the
7 jury's supposed to assume that may be relevant to other issues
8 here. And in which case I can't grant your wish, which is to
9 remove those words, which I understand is your objection.

10 **MS. THOMPSON:** Yes, thank you, Your Honor.

11 One thing that may be helpful to the parties in conferring
12 is if we did have the Court's proposed verdict form, which I
13 don't think we've received yet, so if there is one that we
14 should be keeping in mind as we go through this process that,
15 would be helpful.

16 **THE COURT:** Yeah. Have we not circulated a form?

17 **THE LAW CLERK:** (Inaudible).

18 **THE COURT:** We -- we tried -- we do have -- we'll get
19 that out to you sometime --

20 **MS. THOMPSON:** Thank you, Your Honor.

21 **THE COURT:** -- today.

22 **MS. THOMPSON:** Thank you.

23 **THE COURT:** Before midnight.

24 **MR. PORRITT:** All right, Your Honor. I mean, okay,
25 we'll do our best to comply. I mean, it's going to make --

PROCEEDINGS

1 right now, obviously, I reference in opening statement that
2 they are to use -- the jury should assume that Mr. Musk acted
3 with reckless disregard, which I think is a very important
4 thing to talk about. And if --

5 **THE COURT:** Well, if we don't resolve it --

6 **MR. PORRITT:** -- and that's going to be out -- okay.

7 **THE COURT:** If we don't resolve it, if I decide I'm
8 not going to change anything, you will be able to argue that
9 tomorrow.

10 **MR. PORRITT:** All right. Thank you, Your Honor.

11 **THE COURT:** Okay?

12 **MR. PORRITT:** All right. Thank you, Your Honor.

13 **THE COURT:** So we should convene early tomorrow. I
14 think, 7:45.

15 **MR. PORRITT:** Very good, Your Honor.

16 **THE COURT:** Because we have evidence issues we have to
17 talk about and I don't want to keep the jury waiting.

18 **MR. PORRITT:** Thanks, Your Honor.

19 **THE COURT:** All right. So we're going to bring the
20 jury in, and Ms. Ayala, if you could just tell everybody to sit
21 in the back and I'll just call up the lucky winners and we'll
22 have them seated. How are we seating them?

23 (Off-the-Record discussion)

24 **MR. SPIRO:** May I add one remark?

25 **THE COURT:** Yes.

PROCEEDINGS

1 **MR. SPIRO:** This is Alex Spiro on behalf of the
2 defendants. We're going to -- what we're suggesting is that we
3 remove the state of mind from the case. So, of course, we
4 would not argue the state of mind. It's essentially an element
5 they don't have to prove. This happens all the time in trials,
6 happens very frequently in criminal trials. So what would
7 happen is, you know, if somebody's a felon in possession, the
8 felon has been decided, it's just a case about possession.

9 I've tried many cases where there's an element that has
10 just been decided. It makes the case simpler, it allows the
11 prosecutor or plaintiff to present their case simpler. Unless
12 they are trying to use this assumed recklessness from the
13 Court's imprint for some improper purpose, I don't understand
14 why they wouldn't want it.

15 So the way it would work in a traditional trial would be
16 that there's just one less element for them to prove. So,
17 again, I haven't seen the verdict form, but let's assume it has
18 five elements. On this verdict form, it's going to have one
19 less elements.

20 **THE COURT:** Yes, no, I understand. That's why I
21 wanted you to meet and confer and see if you can reach an
22 agreement. I understand you want to just remove it totally as
23 an element.

24 **MR. SPIRO:** Correct. And the reason I jumped up to
25 say it, Your Honor, is because in the -- in my experience, you

PROCEEDINGS

1 actually would not, at the beginning of a case, read that
2 element that ultimately won't go to them. So that's the only
3 reason I wanted to make a quick -- just explain to the Court my
4 thinking and make it very clear, since I'm going to be opening,
5 that, no, of course, it's -- our hands are tied behind on your
6 back on the issue. It's done. It's decided. We waive that
7 issue as to the way that Ms. Thompson explained. And -- but
8 you wouldn't read that element at this juncture is how it would
9 traditionally go. And I understand the Court's doing this on
10 the fly. We learned about the imputation of scienter recently.
11 There's a lot of moving parts here; we're all doing our best.
12 The reality is, that's how -- that's how it would traditionally
13 continue and that's it. It's decided. They have one less
14 element.

15 **THE COURT:** All right. Well, I'll consider that, but
16 you see what you can work out. But I'm going to go ahead and
17 give the instructions that I have already. As it is already,
18 I'm going to leave out the element in but take out the
19 parenthetical about reckless versus knowing and I'm not going
20 to state the assume reckless disregard at this juncture.

21 **MR. SPIRO:** Right, but then the -- the Court would
22 still be open at some point on the verdict form and at the
23 final instructions to removing the element entirely? I just
24 want --

25 **THE COURT:** Well, it's going to have to be decided

PROCEEDINGS

1 tonight or tomorrow morning.

2 **MR. SPIRO:** Sure, sure, sure, sure.

3 **THE COURT:** Yeah.

4 **MR. SPIRO:** I didn't want to allow the ball to go
5 further down the field without just explaining, making sure
6 that the Court followed our thinking on the matter. Thank you.

7 **THE COURT:** Yeah, yeah. Okay.

8 So, actually, can you help her with that? Oh, she's
9 almost done.

10 (Off-the-Record discussion)

11 **THE COURT:** Social distancing with one exception.

12 (The following proceedings were held in the presence of
13 the Jury Venire)

14 **THE COURT:** Okay, thank you for your patience,
15 everyone. We have gone through the final process and have now
16 selected the nine persons who will serve as jurors in this
17 case. So, I'm going to announce the names. As you do, we'll
18 direct you where to sit. So, Juror No. 1 in this case will be
19 Juror No. 3, Mr. Tinapay. Hi, come on up.

20 And you can take that seat over there, says No. 1 in the
21 corner. The second juror is Juror No. 4, Mr. Martinez. You're
22 here (Indicating). Thank you. The third juror is Ms. Rickard,
23 No. 6.

24 Thank you. And you can take the seat that says No. 3 up
25 there.

PROCEEDINGS

1 Juror No. 4 will be Deepak Sharma, No. 32. And you can
2 sit in seat No. 4.

3 And then, Juror No. 5 is Juror No. 55, Mr. Moore. Thank
4 you.

5 The sixth juror is Juror No. 57, Ms. Cazessus. Thank you.

6 And Juror No. 7 is Juror No. 58, Mr. Xi.

7 And Juror No. 8 is -- is Mr. Torres, who is No. 67.

8 And the ninth juror is Juror No. 73, Mr. Cadogan. Hi,
9 thank you.

10 Great, now congratulations. You have been selected to
11 serve as jurors in this case. And I want to make sure that all
12 of you are able and willing to serve. Correct?

13 (Some Jurors nod)

14 **THE COURT:** Okay. Is the plaintiff satisfied with
15 this jury panel?

16 **MR. APTON:** Yes, Your Honor. Thank you.

17 **THE COURT:** Defense?

18 **MR. SPIRO:** Yes, we are, Your Honor.

19 **THE COURT:** All right. And Ms. Ayala, could you
20 administer the oath?

21 **THE COURTROOM DEPUTY:** Yes.

22 (Jury Panel sworn in)

23 **THE COURTROOM DEPUTY:** Thank you.

24 **THE COURT:** All right. Thank you, members of the
25 jury. And again, congratulations. And thank the rest -- I

PROCEEDINGS

1 want to thank the rest of the panel on behalf of the court and
2 the parties. I know it's been a long day. You have been
3 through a lot, you have answered questionnaires. But you could
4 see why we go through this process, because we want to make
5 sure that the parties have a chance to question and go through
6 your responses and that we are able to select a jury that is
7 going to be fair and impartial. And we often call more people
8 than we need because you never know what's going to happen. So
9 even though you weren't selected for this jury, your
10 participation was essential to the process. So thank you. And
11 thank you for your time.

12 I do believe you get, one reward you get is you get an
13 exemption from this Court's jury service, I don't know if it's
14 for one year or two years, it's some meaningful period of time.
15 So, you get something out of it. And hopefully learned
16 something too, from the process. But thank you very much for
17 your participation. You are excused.

18 Do they need to report back to the jury room or no?

19 **THE COURTROOM DEPUTY:** Huh-uh.

20 **THE COURT:** So thank you all. You are free to leave.
21 So thank you all. Appreciate it very much.

22 Okay.

23 **THE COURT:** Okay as the prospective jurors are leaving
24 the room let me explain where we go from here. I'm first going
25 to give you a preliminary set of instructions. A little bit

JURY INSTRUCTIONS

1 about your duty and how things work. A brief explanation about
2 the legal claims here. And normally we would follow that up
3 with an opening statement from each of the parties. An opening
4 statement is a chance for each party to describe to you what
5 they think the evidence will show. Kind of give you a roadmap
6 to what this trial will look like.

7 Unfortunately because the way trials are we have to call
8 witness by witness and so sometimes it's just not in a
9 chronological order, you get people and you have to sort of
10 fill things in. And as one of my colleagues describes it they
11 are going to describe to you, a trial is like a puzzle and you
12 get different pieces and put them all together and each side is
13 going to try to explain to you what they think that puzzle is
14 going to look like at the end. But because of time what we are
15 going to do is have that process begin tomorrow, where they
16 will give their opening statements. And then after that, we
17 will actually start hearing from witnesses and taking
18 testimony.

19 So, let me start with some preliminary instructions.

JURY INSTRUCTIONS

21 **THE COURT:** Members of the jury, you are now the jury
22 in this case and I want to take a few minutes to tell you
23 something about your duty as jurors and to give you some
24 preliminary instructions. At the end of the trial I will give
25 you more detailed instructions that will control your

JURY INSTRUCTIONS

1 deliberations, when you deliberate it will be your duty to
2 weigh and to evaluate all the evidence received in the case and
3 in that process to decide the facts. To the facts as you find
4 them, you will apply the law as I give it to you. Whether you
5 agree with the law or not. You must decide the case solely on
6 the evidence and the law before you. Perform these duties
7 fairly and impartially.

8 You should not be influenced by any person's race, color,
9 religious beliefs, national ancestry, sexual orientation,
10 gender identity, like or dislikes, sympathy, prejudice, fear,
11 public opinion, or biases, including unconscious biases.
12 Unconscious biases are stereotypes, attitudes or preferences
13 that people may consciously reject but may be expressed without
14 conscious awareness, control or intention. Like conscious
15 bias, unconscious bias can affect the way we evaluate
16 information and make decisions. Do not be afraid to examine
17 any assumptions you or other jurors have made which are not
18 based on the evidence presented at trial.

19 Please do not take anything I may say or do during the
20 trial as indicating what I think of the evidence or what your
21 verdict should be. That is entirely up to you.

22 A word about implicit bias. We all have feelings,
23 assumptions, perceptions, fears and stereotypes about others.
24 Some biases we are aware of and others we may not be fully
25 aware of, which is why they're called implicit or unconscious

JURY INSTRUCTIONS

1 biases. No matter how unbiased we think we are, our brains are
2 hardwired to make unconscious decisions. We look at others and
3 filter what they say through our own personal experience and
4 background. Because we all do this we often see life and
5 evaluate evidence in a way that tends to favor people who are
6 like ourselves, who have had life experiences like our own. We
7 can also have biases about people like ourselves.

8 One common example is automatic association of male with
9 career and female with family. Biases can affect our thoughts,
10 how we remember what we see or hear, whom we believe or
11 disbelieve and how we make important decisions. As jurors, you
12 are being asked to make an important decision in this case.

13 You must, one, take the time you need to reflect carefully
14 and thoughtfully about the evidence.

15 Two, think about why you are making the decisions you are
16 making and examine it for bias. Reconsider your first
17 impression of the people and the evidence in this case. If the
18 people involved in this case were from a different background,
19 were from different backgrounds, for example, richer or poorer,
20 or more or less educated, older or younger, or of a different
21 gender, gender identity, race, religion or sexual orientation,
22 would you still view them and the evidence the same way?

23 Three, listen to one another. You must carefully evaluate
24 the evidence and resist and help each other to resist any urge
25 to reach a verdict influenced by bias for or against any party

JURY INSTRUCTIONS

1 or witness. Each of you have different backgrounds and will be
2 viewing this case in light of your own insights, assumptions
3 and biases. Listening to different perspectives may help you
4 better identify the possible effect, effects these biases may
5 have on decision-making.

6 And four, resist jumping to conclusions based on personal
7 likes or dislikes, generalizations, gut feelings, prejudices,
8 sympathies, stereotypes or unconscious biases.

9 The law demands that you make a fair decision based solely
10 on the evidence, your individual evaluations of that evidence,
11 your reason and common sense and these instructions.

12 A word about claims and defenses. To help you follow the
13 evidence, I will give you a brief summary of the parties and
14 the positions of the parties. That, the party that brings a
15 lawsuit is called the plaintiff. This case is a class action,
16 in which a named plaintiff, called the class representative,
17 represents himself and a large number of unnamed persons called
18 the class. The class representative in this case is Glen
19 Littleton, an individual investor who purchased Tesla
20 securities during the relevant time period in this case.
21 Mr. Littleton, as the class representative, represents a class
22 of investors who bought or sold Tesla securities during the
23 period August 7, 2018, through August 17, 2018, which is
24 referred to as the class period. Unless I distinguish them I
25 will refer to the class representative and the class

JURY INSTRUCTIONS

1 collectively as "the plaintiff."

2 The parties against whom the lawsuit is brought are called
3 the defendants. In this case, the defendants are Elon Musk,
4 Tesla's chief executive officer, members of Tesla's board of
5 directors, and Tesla, Inc. Unless I distinguish them, I will
6 refer to them collectively as "defendants."

7 In this case, plaintiff asserts that Elon Musk and Tesla
8 violated Section 10(b) of the Securities Exchange Act of 1934
9 and the SEC Rule 10b-5(b) by making materially false or
10 misleading statements regarding a potential going-private
11 transaction for Tesla that artificially affected the price of
12 Tesla's stock and other securities during the class period.
13 Specifically, on August 7, 2018, Elon Musk made the following
14 tweet, quote "Am considering taking Tesla private at \$420.
15 Funding secured." Mr. Musk tweeted later on August 7, 2018,
16 that quote, "Investor support is confirmed. Only reason why
17 this is not certain is that it's contingent on shareholder
18 vote."

19 Plaintiff asserts that members of Tesla's board of
20 directors violated Section 20(a) of the Securities Exchange Act
21 of 1934 which imposes liability upon persons responsible for
22 controlling an entity that is found to have violated the
23 federal securities laws.

24 Plaintiff has the burden of proving these claims.

25 Defendant, defendants deny these claims.

JURY INSTRUCTIONS

1 A word about Rule 10b-5, which I just mentioned. The
2 buying and selling of securities is controlled by the
3 securities laws. A 10b-5 claim is a claim brought under a
4 federal statute, Section 10(b) of the Securities Exchange Act
5 of 1934, which in essence prohibits acts of deception in
6 connection with the purchase or sale of a security, and in
7 violation of the rules and regulations that the SEC has the
8 duty and power to issue. The corresponding SEC rule, Rule
9 10b-5, prohibits the misrepresentation of material facts and
10 the omission of material facts in connection with a purchase or
11 sale of securities. A person or business entity who violates
12 the securities laws, including Rule 10b-5, may be liable for
13 damages caused by the violation.

14 Plaintiff alleges that Elon Musk and Tesla, Inc., violated
15 Rule 10b-5 and harmed investors by making materially false and
16 misleading statements about the proposed going-private
17 transaction and its financing. This is referred to as the
18 plaintiff's 10b-5 claim.

19 On this claim, plaintiff has the burden of proving each of
20 the following elements by a preponderance of the evidence.
21 One, Elon Musk and/or Tesla made untrue statements of a
22 material fact, in connection with the purchase or sale of
23 securities.

24 Two, Elon Musk and/or Tesla acted with the necessary state
25 of mind.

JURY INSTRUCTIONS

1 Three, Elon Musk and/or Tesla used an instrument of
2 interstate commerce in connection with the purchase and sale of
3 Tesla securities.

4 Four, plaintiff justifiably relied on Elon Musk and/or
5 Tesla's untrue statements of material fact in buying or selling
6 Tesla securities during the class period.

7 And five, Elon Musk and/or Tesla's misrepresentation
8 caused plaintiff to suffer damages.

9 An instrument of interstate commerce includes postal email
10 -- postal mails, emails, telephone, telegraph, telefax,
11 interstate highway system, internet, and similar methods of
12 communication and travel from one -- and travel from one state
13 to another within the United States.

14 You are to assume that the statements, quote, "Funding
15 secured" and "Investor support is confirmed," "Only reason why
16 this is not certain is that it's contingent on shareholder
17 vote" were untrue. But you must still decide whether these
18 statements were of material facts. A factual representation
19 concerning a securities material if there is a substantial
20 likelihood that a reasonable investor would consider that fact
21 important in deciding whether to buy or sell that security. A
22 material misrepresentation gives a reasonable investor the
23 impression of a state of affairs that differs in a material way
24 from the one that actually exists.

25 Now, I just gave you one instruction, there will be other

JURY INSTRUCTIONS

1 instructions, more detailed instructions at the end of the case
2 but I wanted to give you at least one framework, so you can
3 listen to the evidence and understand a bit about what the --
4 some of the issues are.

5 Now getting to evidence, the definition of evidence. The
6 evidence you are to consider in deciding what the facts are
7 consists of:

8 One, the sworn testimony of any witness;

9 Two, the exhibits that have been admitted into evidence;

10 Three, any facts to which the lawyers have alleged;

11 And four, any facts that I may instruct you to accept as
12 proved.

13 What is not evidence. In reaching your verdict, you may
14 consider only the testimony and exhibits received into
15 evidence. Certain things are not evidence, and you may not
16 consider them in deciding what the facts are. I will list them
17 for you.

18 Number one, arguments and statement by lawyers are not
19 evidence. The lawyers are not witnesses. What they may say in
20 their opening statements, closing arguments and at other times
21 is intended to help you interpret the evidence but it is not
22 evidence. If the facts as you remember them differ from the
23 way the lawyers have stated them, your memory of them controls.

24 Two, questions and objections by lawyers are not evidence.
25 Attorneys have a duty to their clients to object when they

JURY INSTRUCTIONS

1 believe a question is improper under the rules of evidence.
2 You should not be influenced by the objection, or by the
3 Court's ruling on it.

4 Three, testimony that is excluded or stricken or that you
5 are instructed to disregard is not evidence and must not be
6 considered.

7 In addition, some evidence may be received only for a
8 limited purpose. When I instruct you to consider certain
9 evidence only for a limited purpose, you must do so, and you
10 must not consider that evidence for any other purpose.

11 Four, anything you may see or hear when court was not in
12 session is not evidence. You are to decide the case solely on
13 the evidence received at trial.

14 Evidence for a limited purpose. As I mentioned, some
15 evidence may be admitted for a limited purpose. When I
16 instruct you that an item of evidence has been admitted only
17 for a limited purpose, you must consider that only for that
18 limited purpose, and not for any other purpose.

19 Direct and circumstantial evidence. Evidence may be
20 direct or circumstantial. Direct evidence is direct proof of a
21 fact, such as testimony by a witness about what that witness
22 personally saw or heard or did. Circumstantial evidence is
23 proof of one or more facts from which you could find another
24 fact. You should consider both kinds of evidence. The law
25 makes no distinction between the weight to be given to either

JURY INSTRUCTIONS

1 direct or circumstantial evidence. It is for you to decide how
2 much weight to give to any evidence.

3 So by way of example, if you wake up in the morning and
4 you see the sidewalk is wet, you may find from that fact that
5 it rained during the night. However, other evidence, such as a
6 turned-on garden hose may provide a different explanation for
7 the presence of water on the sidewalk. Therefore, before you
8 decide that a fact has been proved by circumstantial evidence
9 you must consider all the evidence in light of reason,
10 experience, and common sense.

11 Ruling on objections. There are rules of evidence that
12 control what can be received into evidence. When a lawyer asks
13 a question or offers an exhibit into evidence, and a lawyer on
14 the other side thinks that that is not permitted by the rules
15 of evidence, that lawyer may object. If I overrule the
16 objection, the question may be answered or the exhibit
17 received. If I sustain the objection, the question cannot be
18 answered and the exhibit cannot be received. Whenever I
19 sustain an objection to a question, you must ignore the
20 question and must not guess what the answer might have been.

21 Sometimes I may order that evidence be stricken from the
22 record and that you disregard or ignore that evidence. That
23 means when you are deciding the case, you must not consider the
24 stricken evidence for any purpose.

25 Credibility of witnesses. In deciding the facts of this

JURY INSTRUCTIONS

1 case, you may have to decide which testimony to believe and
2 which testimony not to believe. You may believe everything a
3 witness says, or part of it, or none of it. In considering the
4 testimony of any witnesses you may take into account:

5 One, the opportunity and ability of the witness to see or
6 hear or know the things testified to;

7 Two, the witness's memory;

8 Three, the witness's manner while testifying;

9 Four, the witness's interest in the outcome of the case,
10 if any;

11 Five, the witness's prejudice or bias, if any;

12 Six, whether other evidence contradicted the witness's
13 testimony;

14 Seven, the reasonableness of the witness's testimony in
15 light of all the evidence;

16 And eight, any other factors that bear on believability.
17 Sometimes a witness may say something that is not consistent
18 with something else he or she said. Sometimes different
19 witnesses will give different versions of what happened.
20 People often forget things or make mistakes in what they
21 remember. Also, two people may see the same event, but
22 remember it differently.

23 You may consider these differences, but do not decide that
24 testimony is untrue just because it differs from other
25 testimony.

JURY INSTRUCTIONS

1 However, if you decide that a witness has deliberately
2 testified untruthfully about something important, you may
3 choose not to believe anything that witness said. On the other
4 hand if you think the witness testified untruthfully about some
5 things but told the truth about others you may accept the part
6 you think is true and ignore the rest. The weight of the
7 evidence as to a fact does not necessarily depend on the number
8 of witnesses who testify. What is important is how believable
9 the witnesses were, and how much weight you think their
10 testimony deserves.

11 Conduct of the jury. Let me say a few words about your
12 conduct as jurors. First, keep an open mind throughout the
13 trial. And do not decide what the verdict should be until you
14 and your fellow jurors have completed your deliberations at the
15 end of the case.

16 Second, because you must decide this case based only on
17 the evidence received in the case, and on my instructions as to
18 the law that applies, you must not be exposed to any other
19 information about the case, or to the issues it involves during
20 the course of your jury duty. Thus, until the end of the case
21 unless I tell you otherwise, do not communicate with anyone in
22 any way and do not let anyone else communicate with you in any
23 way about the merits of the case or anything to do with it.
24 This includes discussing the case in person, in writing, by
25 phone, tablet, or a computer, or any other electronic means,

JURY INSTRUCTIONS

1 via email, text messaging, or any internet chatroom, blog,
2 website or application, including but not limited to Facebook,
3 YouTube, Twitter, Instagram, LinkedIn, Snapchat, Tik-Tok or any
4 other forms of social media. This applies to communications
5 with your fellow jurors until I give you the case for
6 deliberation. And it applies to communicating with everyone
7 else, including your family members, your employer, the media
8 or press, and the people involved in the trial. Although you
9 may notify your family and your employer that you have been
10 seated as a juror in this case, and how long you expect the
11 trial to last. But if you are asked or approached in any way
12 about your jury service or anything about this case you must
13 respond that you have been ordered not to discuss the matter
14 and report the contact to the Court.

15 Because you will receive all the evidence and legal
16 instruction you properly may consider to return a verdict do
17 not read or watch or listen to any news or media accounts or
18 commentary about the case or anything to do with it. Do not do
19 any research such as consulting dictionaries, searching the
20 internet or using other reference materials and do not make any
21 investigation or in any way try to learn about the case on your
22 own. Do not visit or view any place discussed in this case and
23 do not use internet programs or other devices to search for or
24 view any place discussed during the trial. Also, do not do any
25 research about this case, the law or the people involved,

JURY INSTRUCTIONS

1 including the parties, the witnesses or the lawyers, until you
2 have been excused as jurors. If you happen to read or hear
3 anything touching on the case in the media, turn away and
4 report it to me as soon as possible.

5 These rules protect each party's right to have this case
6 decided only on the evidence that has been presented here in
7 court. Witnesses here in court take an oath to tell the truth.
8 And the accuracy of their testimony is tested through the trial
9 process. If you do any research or investigation outside the
10 courtroom, or gain any information through improper
11 communications, then your verdict may be influenced by
12 inaccurate, incomplete, or misleading information that has not
13 been tested through the trial process. Each of the parties is
14 entitled to a fair trial by an impartial jury and if you decide
15 the case based on information not present, presented in the
16 court, you will have denied the parties a fair trial.

17 Remember, you have taken an oath to follow to rules and it is
18 very important that you follow these rules. A juror who
19 violates these restrictions jeopardizes the fairness of these
20 proceedings and a mistrial could result that would require the
21 entire trial process to start over.

22 If any juror is exposed to any outside information, please
23 notify the Court immediately.

24 Publicity during trial. If there is any news media
25 account or commentary about the case or anything to do with it,

JURY INSTRUCTIONS

1 you must ignore it. You must not read, watch, or listen to any
2 news media account or commentary about the case or anything to
3 do with it. The case must be decided by you, solely and
4 exclusively on the evidence that will be received in this case,
5 and on my instructions as to the law that applies. If any
6 juror is exposed to any outside information, please notify me
7 immediately.

8 No transcripts. I urge you to pay close attention to the
9 trial testimony as it is given. During deliberations, you will
10 not have a transcript of the trial testimony.

11 Taking notes. If you wish you may take notes to help you
12 remember the evidence. If you do take notes please keep them
13 to yourself until you go into the jury room to decide the case.
14 Do not let note-taking distract you. When you leave, your
15 notes will be left in the jury room. No one will read your
16 notes. Whether or not you take notes you should rely on your
17 own memory of the evidence. Notes are only to assist your
18 memory. You are not to be overly influenced by your notes or
19 those of other jurors.

20 Bench conferences. From time to time, during the trial,
21 it may be necessary for me to talk with the attorneys out of
22 the hearing of the jury, either by having a conference at the
23 bench when the jury is present in the courtroom, or by calling
24 a research (sic). Please understand that while you are
25 waiting, we are working. The purpose of these conferences is

JURY INSTRUCTIONS

1 not to keep relevant information from you, but to decide how
2 certain evidence is to be treated under the rules of evidence
3 and to avoid confusion and error. Of course we will do what we
4 can to keep the number and length of these conferences to a
5 minimum. And I may not always grant an attorney's request for
6 a conference. Do not consider my granting or denying a request
7 for a conference as any indication of my opinion of the case,
8 or what your verdict should be.

9 Outline of the trial. Trials proceed in the following
10 way. First, each side makes an opening statement. An opening
11 statement is not evidence. It is simply an outline to help you
12 understand what that party expects the evidence will show. A
13 party's not required to make an opening statement.

14 The plaintiff will then present evidence and counsel for
15 the defendant may cross-examine. Then, the defendant may
16 present evidence and counsel for the plaintiff may
17 cross-examine.

18 After the evidence has been presented, I will instruct you
19 on the law that applies to the case, and the attorneys will
20 make closing arguments.

21 After that, you will go to the jury room to deliberate on
22 your verdict.

23 So, that brings us to the end of this day. We will start
24 tomorrow morning at 8:30. If you could get here early so we
25 could start promptly at 8:30 that would be greatly appreciated

JURY INSTRUCTIONS

1 because if any one of you are not here or late we can't get
2 started until everybody is here. I think we will first start
3 off with the opening statements from each of the parties and
4 then we will begin as I mentioned, to hear witness testimony.

5 So Vicky will, I think, explain to you before you take off
6 where to go and may make sure we have your contact information
7 and give you a brief orientation.

8 And, but let me remind you that as you leave here, please
9 comply with my rule that you are not to do any research, talk
10 to anybody about this case, even family members, avoid anybody
11 from any press or any other organization or anybody, about
12 talking about this case and please do not read or listen to any
13 reportage of this case and I ask you to turn away from any
14 coverage so that you don't hear anything. It's very important
15 that your evaluation of this case and your deliberations be
16 based solely on what you hear in this courtroom for the reasons
17 I've stated.

18 And so, and don't do any research, obviously, as I
19 mentioned. So, with that direction, I'm going to excuse the
20 jury for the day. And I expect that we will reconvene tomorrow
21 morning.

22 So, thank you for your service, and we look forward to
23 seeing you tomorrow.

24 **THE COURTROOM DEPUTY:** All rise for the jury.

25 (Jury excused)

PROCEEDINGS

1 (The following proceedings were held outside of the
2 presence of the Jury)

3 **THE COURT:** All right. So, let's take up these
4 matters tomorrow morning, in terms of whether there's going to
5 be either a stipulated or non-stipulated withdrawal. I guess I
6 need to think about the question that Mr. Porritt raised and
7 that is even if there's a stipulation as to scienter, whether
8 the jury should be instructed that they are to assume reckless
9 disregard is a matter that should be -- should be given anyway,
10 in any event. And your argument is that it's relevant because
11 it goes to -- it may affect credibility.

12 And your argument is that it's prejudicial, it's not
13 necessary, it's not part of this case.

14 **MR. SPIRO:** (Nods head)

15 **THE COURT:** Interesting question. So, let me know
16 what you decide as soon as possible. Let me ask about the --
17 whether you -- maybe not have had a chance to meet and confer
18 about the objections, to the second day of trial.

19 **MR. SPIRO:** We have not but we can do that shortly.

20 **THE COURT:** Okay if you could do that I would
21 appreciate it. And let me know what you respond. I know you
22 wanted an extension of time, we're probably almost past that
23 time. So I'm going to be merciful and give you until 5:00 to
24 file a response, give you a little bit of time to meet and
25 confer and see if you can resolve some issues.

PROCEEDINGS

1 **MR. APTON:** Thank you, Your Honor.

2 **THE COURT:** All right?

3 **MR. SPIRO:** Thank you.

4 **THE COURT:** So. We're off to the races.

5 **MR. APTON:** Thank you for today, Your Honor.

6 **THE COURT:** All right. Thank you.

7 (Proceedings concluded)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RDR

Tuesday, January 17, 2023